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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1466

[Docket No. NRCS–2014–0007]

RIN 0578–AA62

Environmental Quality Incentives Program (EQIP)

AGENCIES: Natural Resources Conservation Service (NRCS) and the Commodity Credit Corporation (CCC), U.S. Department of Agriculture (USDA).

ACTION: Interim rule adopted as final with changes.

SUMMARY: An interim rule, with request for comments, was published on December 12, 2014, to implement changes to EQIP that were either required by the Agricultural Act of 2014 (the 2014 Act) or required to implement administrative streamlining improvements and clarifications. This document provides background on the final rule, issues the final rule to make permanent these changes, responds to comments, and makes further adjustments in response to some of the comments received.

DATES: Effective Date: This rule is effective May 12, 2016.

FOR FURTHER INFORMATION CONTACT: Mark Rose, Director, Financial Assistance Programs Division, U.S. Department of Agriculture, Natural Resources Conservation Service, Post Office Box 2890, Washington, DC 20013–2890; telephone: (202) 720–1845; fax: (202) 720–4265. Persons with disabilities who require alternate means for communication (Braille, large print, audio tape, etc.) should contact the USDA TARGET Center at: (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Background

The 2014 Act reauthorized and amended EQIP. EQIP is implemented under the general supervision and direction of the Chief of NRCS, who is a Vice President of CCC.

Through EQIP, NRCS incentivizes agricultural producers to conserve and enhance soil, water, air, plants, animals (including wildlife), energy, and related natural resources on their land. In particular NRCS provides technical and financial assistance to implement conservation practices in a manner that promotes agricultural production, forest management, and environmental quality as compatible goals; optimize conservation benefits; and help agricultural producers meet Federal, State, and local environmental requirements. Conservation benefits are reflected in the differences between anticipated effects of treatment in comparison to existing or benchmark conditions. Differences may be expressed by narrative, quantitative, visual, or other means. Estimated or projected impacts are used as a basis for making informed conservation decisions by applicants and NRCS to help determine which projects to approve for EQIP assistance.

Eligible lands include cropland, grassland, rangeland, pasture, wetlands, nonindustrial private forest land, and other land on which agricultural or forest-related products or livestock are produced and natural resource concerns may be addressed. Participation in the program is voluntary.

On December 12, 2014, the EQIP interim final rule with request for comments was published in the **Federal Register** (79 FR 73953) that amended the EQIP regulations at 7 CFR part 1466 to implement changes made by the 2014 Act. The changes made to the EQIP regulation by the interim rule include:

- Eliminating the requirement that the program contract remain in place for a minimum of 1 year after the last practice is implemented, but keeping the requirement that the contract term not exceed 10 years;
- Consolidating elements of the Wildlife Habitat Incentive Program (WHIP) in light of the 2014 Act repealing the WHIP authority and incorporating its purposes into EQIP;
- Targeting at least five percent of available EQIP funds for wildlife-related conservation practices for each fiscal year (FY) from 2014 to 2018;
- Replacing the rolling 6-year payment limitation with an established payment limitation for FY 2014 to FY 2018;
- Requiring Conservation Innovation Grants (CIG) to report no later than Dec 31, 2014, and every 2 years thereafter;
- Establishing a $450,000 payment limitation and eliminating payment limit waiver authority.
- Modifying the special rule for foregone income payments for certain associated management practices and resource concern priorities;
- Revising availability of advance payments to up to 50 percent for eligible historically underserved participants to purchase material or contract services instead of the previous 30 percent;
- Providing flexibility for repayment of advance payment if payments are not expended within 90 days;
- Identifying EQIP as a contributing program authorized to accomplish the purposes of the Regional Conservation Partnership Program (RCPP) (Subtitle I of Title XII of the Food Security Act of 1985, as amended) (Seven percent of EQIP's funding is transferred to facilitate implementation of RCPP); and
- Adding provisions to target assistance to veteran farmers and ranchers.

In addition to updating the EQIP regulation to reflect changes made by the 2014 Act, the following administrative changes in the EQIP interim rule were made:

- Incorporating nonindustrial private forest owners and Indian Tribes where appropriate;
- Making reference to Tribal Conservation Advisory Councils when appropriate;
- Clarifying the issues where State Technical Committees and Tribal Conservation Advisory Councils provide input;
- Adjusting definitions to conform to definitions in other NRCS and USDA regulations;
- Clarifying definitions and requirements for development of Comprehensive Nutrient Management Plans (CNMP) associated with Animal Feeding Operations (AFO);
- Clarifying outreach activities and adding language that NRCS will ensure outreach is provided so as to not limit producer participation because of size

or type of operation, or production system, including specialty crop and organic production;

- For irrigation and water management practices, allowing an exception to the requirement that land has to have been irrigated 2 of the previous 5 years. The Chief may grant a waiver where there was a loss of access to water due to circumstances beyond the producer's control;
- Changing the contract limitation to correspond with the new payment limitation and clarify that such limitations do not apply to Indian Tribes;
- Revising the rule to clarify when payment rates may be reduced as a result of NRCS entering into a formal agreement with a partner who provides payments to producers participating under general EQIP implementation, *i.e.* outside of RCPP;
- Revising and adding definitions to reflect EQIP authority to encourage development of wildlife habitat;
- Clarifying terminology and procedures associated with the development of payment schedules documenting practice payment rates;
- Simplifying language throughout to improve the regulation's readability; and
- Removing provisions in the rule that relate solely to internal agency administrative procedures that do not impact any rights or responsibilities of participants in the program;

Summary of EQIP Comments

The interim final rule had a 60-day comment period ending February 10, 2015. There were received 65 timely submitted responses to the rule, constituting 331 comments. This final rule responds to comments received during the public comment period and incorporates changes as appropriate. In this preamble, the comments have been organized alphabetically by topic. The topics include: Acreage cap, administration, advanced payments, allocations, comprehensive nutrient management plan, conservation activity plans, conservation innovation grants, conservation plan, conservation practices, contract length, contract violation and terminations, definitions, EQIP plan of operations, forestry funding, fund management, grouping and selecting applications, irrigation history, national priorities, payment limitations, program requirements, regional conservation partnership program, regional conservationist approval, regulatory certifications, Transparency Act requirements, technical service providers, veteran farmer or ranchers, and wildlife funding. Additionally, NRCS received 34 comments that were general in nature, most of which expressed support for the program or how the program has benefitted particular operations. The topics that generated the greatest response include the irrigation history requirement waiver, wildlife funding, and funding for animal feeding operations.

1. Acreage Cap

Comment: NRCS received one comment recommending that NRCS establish a maximum acreage cap for EQIP contracts.

NRCS Response: NRCS implements EQIP in a size-neutral way. The EQIP statute provides a payment limitation and the regulation further provides for a contract limitation. NRCS does not believe any further limitations are necessary to ensure broad participation on farms and ranches of all sizes. No changes were made in response to this comment.

2. Administration

Comment: NRCS received nine comments related to Administration, § 1466.2, most of which were from Conservation Districts. The commenters requested that there be waiver authority for EQIP regulatory provisions for all EQIP implementation, and not limited to RCPP implementation. Several of the comments recommended that NRCS provide greater emphasis to local working groups, identifying that local work groups were removed from the State Technical Committee final rule in 2009. One of the comments also requested that coordination with Indian Tribes be incorporated into the Administration section.

NRCS Response: Local working groups remain an integral component of the operations of the State Technical Committee. They were fully incorporated into the State Technical Committee final rule and operating procedures. The comments about local working groups do not relate to EQIP implementation directly, or to the EQIP final rule, and therefore no changes were made.

NRCS limits the ability to waive EQIP regulatory provisions to the authority provided by statute under RCPP, and believes that it is not appropriate to extend such waiver authority further. With its review of project-wide considerations, RCPP provides a structured format for consideration of waiver requests that helps ensure waivers are not granted in an arbitrary fashion. This safeguard is not available for consideration of waiver requests during a general EQIP sign-up. No changes were made to the regulation in response to the recommendation that the regulatory waiver authority be extended to all EQIP contracts.

NRCS coordinates with Indian Tribes to ensure that program opportunities are available on Tribal lands to Tribal members. NRCS currently identifies this coordination with Indian Tribes, including with the Tribal Conservation Advisory Council (TCAC), the State Technical Committee, and local working groups, in § 1466.2 and throughout the regulation.

NRCS policy related to coordination with Indian Tribes and Tribal members is found at Part 405 of Title 410 of the NRCS General Manual. In its policy, NRCS identifies that an Indian Tribe may designate a TCAC to provide input on NRCS programs and the conservation needs of the Tribe and Tribal producers. The TCAC may:

- Be an existing Tribal committee or department, including a Tribal conservation district;
- Consist of an association of member Tribes that provide direct consultation to NRCS at the State, regional, and national levels; or
- Include a Tribal designee (or designees) from a State Association of Tribal Conservation Districts that represents them and participates as part of the TCAC.

Since coordination with Indian Tribes is established as part of the regulation and NRCS policy, no change was made to the EQIP regulation in response to this comment.

3. Advanced Payments

Comment: NRCS received seven comments expressing approval for the additional flexibility available for advanced payments.

NRCS Response: NRCS appreciates the positive feedback. The additional flexibility for advanced payments is provided to assist historically underserved producers meet their responsibilities under the EQIP contract. No changes were necessitated by the comments expressed by the respondents.

4. Allocations

Comment: NRCS received five comments requesting more transparency in the method used to allocate EQIP resources between States. These comments recommended against the use of the 2011 State Resource Assessment (SRA).

NRCS Response: The SRA process has been improved significantly since 2011 and now allows States to leverage national, State, and local data to present funding needs and demand in a flexible and transparent manner. At the national level, this process enables NRCS to focus funding on the highest priority resource needs across all States. The resulting annual allocation reflects State-demonstrated need and available funding. In addition, NRCS maintains the flexibility to adjust annual allocations in order to address emerging issues. For example, in FY 2014, NRCS was able to send several States severely impacted by drought an additional $20 million above their annual allocation in order to provide critical assistance to the impacted producers.

5. Animal Feeding Operations

Comment: NRCS received nine comments expressing concern about using EQIP funds for new or expanding Confined Animal Feeding Operations (CAFOs). Some comments recommended that NRCS require a CAFO applicant to complete a CNMP as a prerequisite to receiving any EQIP funds to build a waste storage or treatment facility. Other comments recommended that NRCS undertake a full environmental review of the impact of EQIP CAFO funding.

NRCS Response: Section 1240E(a)(3) of the Food Security Act of 1985 (1985 Act), as amended, authorizes payments for AFOs provided the producer submits a plan of operations that provides for development and implementation of a CNMP. In the interim rule, NRCS revised the definition for AFO and CNMP, and revised § 1466.7, EQIP Plan of Operations, to clarify that if an EQIP plan of operations includes an animal waste storage or treatment facility to be implemented on an AFO, the participant must agree to develop and implement a CNMP by the end of the contract period. This requirement is further mirrored at § 1466.21, Contract Requirements, to state that a CNMP should be implemented when an EQIP contract includes an animal waste facility on an AFO. NRCS currently provides EQIP assistance for existing and expanding CAFO's in accordance with statutory regulations that require EQIP to provide assistance in situations where resource concerns currently exists.

As provided by statute and rule, NRCS already requires development of a CNMP as a condition to implement waste facility practices. Since some practices must be implemented prior to others, it is infeasible to require full implementation of a CNMP as a precondition for EQIP assistance for applicable practices.

As identified above and in the regulatory certifications, two respondents recommended that NRCS undertake an environmental analysis of the effects of providing EQIP assistance to CAFOs. NRCS has and will continue to conduct an environmental evaluation before providing EQIP financial assistance to any producer to ensure EQIP financial assistance does not result in significant adverse impacts to the quality of the human environment. The environmental evaluation is used to aid NRCS in compliance with the National Environmental Policy Act (NEPA) and helps NRCS determine the need for an environmental analysis (EA) or environmental impact statement (EIS) when the impacts of the proposed action do not fall within a categorical exclusion or have not already been addressed in the EQIP programmatic EA.

6. Comprehensive Nutrient Management Plan (CNMP)

Comment: NRCS received three comments recommending that participants develop a CNMP prior to funding waste storage practices.

NRCS Response: The EQIP regulation at § 1466.7, EQIP Plan of Operations, requires a CNMP to be implemented if an EQIP plan of operations includes an animal waste storage on an AFO. This requirement is further mirrored in § 1466.21, Contract Requirements, to state that a CNMP will be implemented when an EQIP contracts includes an animal waste facility on an AFO. No changes were made to the EQIP regulations in response to these comments.

7. Conservation Activity Plans

Comment: NRCS received one comment, disagreeing with the NRCS technical policy determination that Conservation Activity Plan (CAP) 142 on forest land must be approved by a Technical Service Provider (TSP) certified for forestry planning.

NRCS Response: Section 1240E of the EQIP statute requires that EQIP payments for a practice related to forest land must be consistent with the provisions of a "forest management plan that is approved by the Secretary." This requirement was incorporated into the EQIP interim rule at 7 CFR 1466.7(e).

CAP 142 is a wildlife habitat management plan. Under the TSP provisions at 7 CFR part 652, a TSP hired by a program participant may utilize the services of another TSP to provide specific technical services or expertise needed by the participant. However, it remains the responsibility of the TSP hired by the participant to ensure that any technical services provided to them meets NRCS standards and specifications, and are consistent with the Certification Agreement the TSP entered into with NRCS at the time of Certification. Therefore, on a project-by-project basis, when CAP 142 on forested lands identifies the use of complex forestry conservation practice standards, such as Forest Stand Improvement (FSI), the plan must be approved by a TSP that also has been certified as having the requisite forestry technical skills. Other CAP 142 wildlife habitat management plans may not include forestry practices as complicated as FSI. Depending on the geographic location and the particular practices being planned and implemented, NRCS maintains the flexibility to determine when CAP 142 projects on forested lands need to be approved by TSPs who also have been certified for particular forestry conservation practices. As a result, no changes were made in response to this comment.

8. Conservation Innovation Grants (CIG)

Comment: NRCS received six comments concerning CIG, three of which were recommendations. In particular, one commenter recommended that the NRCS State Conservationist, in consultation with the State Technical Committee, should be able to identify other resource concerns for State CIG projects and not be limited to either the national resource concerns or a subset of those concerns. Another commenter recommended that NRCS aggressively promote the on-farm research and development option, including a special focus on and significant funding for projects of this nature in each year's CIG announcement of program funding (APF). A third commenter recommended that NRCS continue to publish the APF in the **Federal Register**.

NRCS Response: The EQIP regulation currently allows flexibility for NRCS to implement State-level CIGs, with resource priorities identified by the State Conservationist in consultation with the State Technical Committee. In particular, funding availability, application, and submission information for State competition are announced through public notice (*Grants.gov*) separately from the national notice. The State Conservationist determines the State component categories to be offered annually. The regulation already addresses the comment regarding State identification of CIG priorities and no changes are needed.

For the first time the 2014 Act included language to allow CIG to fund on-farm research and development of technologies and approaches, and this authority was incorporated into the EQIP regulation. NRCS now provides support through CIG to on-farm conservation research, pilot projects, and field demonstrations of promising approaches or technologies. CIG applications should demonstrate the use of innovative approaches and technologies to leverage the Federal investment in environmental enhancement and protection, in conjunction with agricultural production. NRCS appreciates the comment recommending vigorous support for these efforts, but no further change is needed to the regulation in order for NRCS to provide such support.

NRCS supports the broad dissemination of the public announcement of national CIG competition. The CIG APF contains guidance on how to apply for the grants competition. NRCS, at one time, used the **Federal Register** for CIG announcements, but removed the requirement in the interim rule in order to speed up and simplify the process of making funding announcements. CIG opportunities are now advertised through the NRCS Web site and *Grants.gov.* No changes were made in response to this recommendation given the wide availability of notice about the CIG APF through other avenues.

9. Conservation Plan

Comment: NRCS received one comment recommending that a comprehensive conservation plan should be required prior to obtaining assistance.

NRCS Response: NRCS supports and believes that comprehensive conservation planning is a valuable conservation tool for producers, but does not agree it should make EQIP assistance contingent upon an applicant having obtained a comprehensive conservation plan. Section 1240F of the EQIP statute requires NRCS to assist producers by "providing payments for developing and implementing 1 or more practices, as appropriate" and "providing the producer with information and training to aid in implementation of the plan." Given that the statute provides the flexibility for NRCS to provide EQIP assistance to implement only one practice, NRCS believes that the intent is for the planning to be similarly flexible to meet the current conservation needs of its participants. No changes were made in response to this comment.

10. Conservation Practices

Comment: NRCS received seven comments regarding conservation practices, six of which were recommendations. A couple of the commenters recommended that NRCS allow treatment to be done on the highest priority soils or ecological sites within a Conservation Management Unit, without making the rest of the land unit ineligible for future treatments. One commenter recommended a review and expansion of available conservation practices to better serve historically underserved, veteran, organic, small farmer, and other diverse producers. One commenter recommended adding to the regulation the requirement that financial assistance only be made for conservation practices that address the Priority Natural Resource Concerns identified in the EQIP Plan of Operations. One commenter recommended that NRCS annually consult with the State fish and wildlife agencies and the U.S. Fish and Wildlife Service (FWS).

NRCS Response: NRCS policy authorizes repeated implementation of conservation practices on land where the subsequent implementation of the practice will significantly improve the level of treatment addressing a resource concern. EQIP assistance is provided to the highest priority applications based upon the ranking criteria developed in consultation with the State Technical Committees. FWS and State fish and wildlife agencies are members of the NRCS State Technical Committee and therefore do not need to be identified separately in the EQIP regulation. NRCS continually reviews its conservation practices and whether NRCS assistance is able to address the resource concerns that the diversity of producers may have. No changes were needed in response to these comments.

11. Contract Length

Comment: NRCS received one comment recommending that the maximum contract length be reduced from 10 years to 5 years.

NRCS Response: Section 1240B of the EQIP statute allows an EQIP contract to have a 10-year duration. Congress has consistently retained this contract term in statute, recognizing the need for variation in contract duration. NRCS believes it must provide the flexibility authorized under the statute and that there are situations where implementation of conservation practices over a longer contract period is needed to address the resource concern. Therefore, no changes were made to the regulation in response to this comment.

In addition, a ranking criterion was added at 7 CFR 1466.20(b) to provide priority to applicants who indicate a willingness to complete all conservation practices in an expedited manner. NRCS identified that the purpose of this ranking criterion was to further statutory intent and to ensure timely and effective conservation improvements. NRCS continues to support the policy behind this regulation. NRCS implements this regulatory provision during the ranking process for applicants that indicate a willingness to implement all conservation practices within 3 years. While the statute authorizes contracts can be for up to 10 years in duration, NRCS implements this criterion for those funding pools where the nature and type of the resource concern to be addressed and practices applied do not require longer term conservation treatment, such as with applications for exclusion fences or other applications with comparatively low application costs. Additionally, NRCS recognizes that this criterion may not be appropriate to implement in funding pools set aside for historically underserved or limited resource producers, or in cases where infrastructure construction is necessary, as financially these producers or projects may need a longer implementation schedule.

12. Contract Violation and Terminations

Comment: NRCS received seven comments opposed to the removal of the specific reference to conservation districts in EQIP contract termination decisions.

NRCS Response: The EQIP interim rule removed the provision at 7 CFR 1466.26 which identified that NRCS may consult with conservation districts in EQIP contract termination decisions. NRCS removed this section due to the limitations on the disclosure of certain types of information provided by an agricultural producer under Section 1619 of the Food, Conservation, and Energy Act of 2008 (2008 Act). NRCS will continue to work closely with its conservation district partners in the implementation of EQIP and its other conservation programs. No changes were made in response to these comments.

The EQIP contract violation provisions (7 CFR 1466.25) address circumstances in which a participant violates their EQIP contract by losing control of the land under contract. NRCS may allow a participant to transfer the EQIP contract rights to an eligible producer provided the participant notifies NRCS of the loss of control within the time specified in the contract, NRCS determines that the new producer is eligible to participate in the program, and the transfer of the contract rights does not interfere with meeting program objectives.

Given that the new producer is not a party to the EQIP contract until NRCS approves the contract transfer and adds the new producer to the contract, a new producer may not be aware they are not eligible for payment until the contract transfer has been approved by NRCS. In particular, any practices that a new producer implements prior to NRCS approval of the contract transfer is not eligible for payment because they are not a program participant at the time of implementation. Changes to 7 CFR 1466.25 clarify a participant's responsibility to notify NRCS about any loss of control of land, the timing of when a new producer must be identified, the timing of when a new producer becomes eligible for payment, and the circumstances when partial or full termination of the contract may be appropriate. These changes do not affect the substance of the EQIP regulatory and policy framework regarding land transfers.

13. Definitions

Comment: NRCS received 27 comments related to the definitions found at 7 CFR 1466.3 of the EQIP interim rule. Amongst these comments, there were a few comments regarding how historic use areas by Indian Tribes should be considered as areas of an agricultural operation.

NRCS Response: Most of the comments were from the same respondent, and related to suggested edits to the wildlife definitions. NRCS recognizes the unique status that Tribal lands and treaties have and will work with Tribal entities to ensure that agricultural operations are properly delineated. These comments did not require any changes to the regulation.

14. EQIP Plan of Operations

Comment: NRCS received 11 comments related to 7 CFR 1466.7, EQIP Plan of Operations. The comments related to CNMPs have been discussed above. Other comments recommended that the regulation specify that all conservation practices in the EQIP plan of operations must be approved by NRCS or an NRCS-approved TSP with appropriate job approval authority in accordance with the applicable NRCS Conservation Practice Standards in the Field Office Technical Guide. Some comments also recommended that the EQIP plan of operations identify the specific resource concerns to be addressed, which currently is not included.

NRCS Response: NRCS currently requires that the EQIP plan of operations be approved by NRCS or a certified TSP, and these comments do not require any changes be made to the EQIP regulation. The EQIP plan of operations is intended to inform producers what practices are included in the contract, the payment rate for the practice, and when the practice must be installed. Information related to the resource concerns being addressed are included in the conservation plan folder, the environmental evaluation documentation (NRCS–CPA–52), and are the basis for many of the program ranking criteria. As such, it is not necessary to duplicate this information in the EQIP Plan of Operations. No changes were made in response to these comments.

15. Forestry Funding

Comment: NRCS received one comment to the EQIP interim rule, recommending that at least 5 percent of EQIP funds be dedicated to forestry practices.

NRCS Response: Greater than 5 percent of EQIP funds have been dedicated to forestry practices following the increased emphasis upon providing assistance to non-industrial private forestlands since the 2008 Act. No changes are needed in order to meet the respondent's recommendations. However, NRCS notes that two of its regulatory provisions may inadvertently hinder participation by forest landowners. Namely, §§ 1466.7(e) and 1466.21(b)(3)(v) require that if an EQIP plan of operations includes conservation practices that address forest-land-related resource concerns, the participant must develop and implement a forest management plan by the end of the contract period. Often, a forestry management plan extends beyond 10 years and thus beyond the maximum duration of an EQIP contract. As such, it may not be feasible for a forestry landowner to implement fully the forestry management plan during the EQIP contract term. Unlike a CNMP that covers a specific type of operation with practices that can be more immediately implemented, a forestry management plan deals with managing a landscape which may require several years for the forest to respond to a treatment before another can be applied. Therefore, the provisions at §§ 1466.7(e) and 1466.21(b)(3)(v) are modified to require a participant to implement conservation practices consistent with an approved forest management plan if the EQIP plan of operations addresses forest-land-related resource concerns.

16. Fund Management

Comment: NRCS received one recommendation that it dedicate a specific amount of EQIP funding for specific categories (cover crops, CAFOs, etc.) to avoid situations where NRCS and producers are unsure of the level of funding available. The commenter expressed that this creates situations where producers scramble to get their paperwork submitted to meet deadlines only to learn later that they will not be funded.

NRCS Response: NRCS identifies the resource concerns that will receive priority through the posting of its ranking criteria and associated application deadlines, including special announcements of initiative funding. NRCS believes that this provides producers with information necessary to know what activities will receive funding priority. EQIP is only able to fund about 37 percent of the eligible applications it receives. No changes were made in response to these comments.

17. Grouping and Ranking Applications

Comment: NRCS received 15 comments about ranking and 5 comments about grouping applications. The ranking recommendations included that NRCS should:

- Have no ranking;
- Streamline the application process and ranking;
- Not prioritize applications based upon a producer's ability to expedite practice implementation;
- Prioritize grass-based systems over AFOs;
- Encourage transition to more sustainable practices;
- Prioritize greenhouse gas reduction and carbon sequestration; and
- Include consistency with Tribal law as well as State law related to irrigation practice provisions.

As to the grouping of applications, one commenter felt that beginning farmers and ranchers received too much emphasis. One commenter felt that there were too many funding pools, while another recommended that States with at-risk species have more funding pools. One commenter recommended that operations compete against operations of similar sizes, while another commenter recommended prohibiting separate funding pools for CAFOs and instead encourage grazing plans for livestock.

NRCS Response: NRCS accepts EQIP applications on a continuous basis, but establishes application "cut-off" or submission deadline dates for evaluation and ranking of eligible applications. Depending upon annual funding levels, NRCS will allocate specific amounts of EQIP funding to meet legislative requirements, address certain national priorities, and also make funds available for NRCS State Conservationists to help address resource priorities identified by State Technical Committees. These priorities are then incorporated into ranking criteria, based upon the factors identified in statute and in § 1466.20 of the EQIP rule. In response to the request to streamline the application and ranking process, for many years NRCS has utilized screening factors as part of its evaluation and ranking of priority projects. To clarify that these screening factors are part of the ranking process, slight adjustments have been made in § 1466.20(b) to identify how these screening factors are used as part of the evaluation and selection of projects.

In evaluating EQIP applications, NRCS strives to obtain input from Tribes, States, and other affected constituents through seeking advice from the State Technical Committees, TCACs, and local working groups. For water conservation or irrigation-related practices, TCACs routinely have the opportunity to identify issues, including those that raise concerns related to Tribal laws, in order to advise NRCS on more effective ways to deliver programs and on the application process. While not explicitly stated in the regulation, NRCS believes that this advisory process with State Technical Committees and TCACs is considerate of and consistent with applicable State and Tribal laws.

Additionally, in its ranking, NRCS groups applications to the greatest extent possible by similar crop, forestry, or livestock operations for evaluation purposes or otherwise evaluating each application relative to other applications of similar agricultural operations. NRCS establishes a funding pool for beginning farmer and ranchers in accordance with statutory set-aside requirements. Subaccounts may also be developed to address a specific resource concern, geographic area, or type of agricultural operation, such as addressing habitat needs of at-risk species. However, to promote efficient and timely delivery of program assistance, NRCS policy encourages States to limit creating subaccounts in ProTracts to the minimum number needed to effectively rank and approve applications. EQIP policy currently addresses the respondents concerns regarding grouping applications and no changes were made to the regulation.

18. Irrigation History

Comment: NRCS received 73 comments related to the irrigation history requirement and the criteria that NRCS should consider for waiving it. The following summarizes the general content of these comments, recommending:

- Support for the new waiver provision;
- The requirements for the waiver be less restrictive;
- That Indian Tribes be exempt from the irrigation history requirement altogether, or at least not subject to the agricultural history waiver criterion, provided the Tribe has a secured legal water right;
- The irrigation history requirement be completely removed;
- All producers, not just limited resource or socially disadvantaged producers, be eligible for a waiver; and
- Specific recommendations related to the waiver criteria, such as:
    - ○ Removing the proposed acreage limit;
    - ○ Removing the exclusion of land that has been subject to a water shortage;
    - ○ Prohibiting waivers on native prairie and grasslands with no prior cropping history;
    - ○ Clarifying the types of practices that are considered irrigation practices;
    - ○ Clarifying whether the acreage limitation is per operation or per year; and
    - ○ Considering impacts to wildlife when implementing irrigation practices.

NRCS Response: NRCS proposed several criteria and requested public comments on the criteria that will be used to determine whether to waive the irrigation history requirement, including whether:

- The waiver provision should be limited to applicants who are limited resource or socially disadvantaged producers (including Indian Tribal producers). Beginning farmers and ranchers were excluded from this consideration;
- The irrigation practices are necessary for the adoption of a sustainable agricultural production method, such as the adoption of cover crops to improve the soil condition;
- The land has been in active agriculture (cropped, hayed, or grazed) for 4 of the last 6 years;
- The waiver would adversely impact limited surface or groundwater supplies; and
- An acreage limitation should be applied, such as 50 acres per producer or 200 acres per Tribe.

In order to implement the waiver provision, NRCS developed and issued program policy at Title 440 Conservation Programs Manual, Part 515, Section 515.52, reflecting all criteria in the preamble of the EQIP rule except for the acreage limitation. NRCS believes that the criteria incorporated into policy ensure that program participants will be able to obtain access to EQIP to address resource concerns in a manner that does not adversely affect available water supplies. NRCS will continue to evaluate the utility of these criteria as it reviews actual waiver requests and may make adjustments based upon the experience obtained from actual implementation of the waiver provision.

19. National Priorities

Comment: NRCS received one comment on national priorities, recommending broadening national priority related to threatened and endangered species under the Endangered Species Act.

NRCS Response: As identified in the EQIP regulation, the national priority is not limited to Federally-listed threatened and endangered species, but identifies the promotion of habitat conservation for "at-risk" species habitat conservation. "At-risk" species include any plant or animal listed as threatened or endangered; proposed or a candidate for listing under the Endangered Species Act; a species listed as threatened or endangered under State law or Tribal law on Tribal land; State or Tribal land species of conservation concern; or other plant or animal species or community, as determined by the State Conservationist, with advice from the State Technical Committee or TCAC, that has undergone, or is likely to undergo, population decline and may become imperiled without direct intervention. No changes were made in response to this recommendation.

20. Outreach Activities

Comment: NRCS received six comments on outreach, five of which expressed approval for NRCS' current efforts with respect to historically underserved producers and recommending that NRCS maintain and expand outreach to these producers. One commenter recommended increasing participation among forestry landowners.

NRCS Response: NRCS will continue to expand its outreach to historically underserved producers.

NRCS is working in coordination with other USDA and Federal agencies to ensure that we are consistent with our outreach approach to serve historically underserved producers in rural and urban areas. NRCS is collaborating and working cooperatively with a variety of community-based organizations to ensure all customers receive high quality service and the information necessary to fully participate in all of its programs and services. For example, most recently, NRCS initiated a major partnership project in Alabama, North Carolina, and South Carolina to assist African American forest landowners in adopting and applying sustainable forest management practices to improve the value of their forestlands. Due to the success of this partnership, NRCS is looking to expand this project into Arkansas, Georgia, Mississippi, Virginia, and Indian Country.

21. Payment Limitations

Comment: NRCS received eight comments concerning payment limitations, five of which recommending a separate payment limitation lower than the current statutory levels.

NRCS Response: Section 1240G of the EQIP statute specifies a $450,000 payment limitation for persons and legal entities. The EQIP statute does not provide authority to mandate a lower payment limitation. No changes were made to the regulation in response to this comment.

22. Program Requirements

Comment: NRCS received 13 comments regarding various program requirements, 11 of which made specific recommendations including:

- Higher payment rates for historically underserved producers with one commenter expressing disagreement for higher payment rates, while another commenter expressed support for veteran farmers or ranchers receiving a higher payment rate;
- Payment schedule scenarios, with two commenters recommending that payment scenarios be published on NRCS State Web sites, one commenter recommending that NRCS address disparities between small or large operations of payments for management practices that are based on number of acres, while another commenter recommending that NRCS have additional organic production scenarios; and
- Initiatives, with the commenter requesting clarification about when NRCS may reduce the level of EQIP assistance provided due to a contribution by a partnering entity.

NRCS Response: NRCS will continue to encourage enrollment by historically underserved producers through statutory tools such as higher payment rates and funding pool set asides, and programmatic policy emphasis and outreach efforts. NRCS will consider the recommendations regarding its payment schedules in its fiscal year 2016 and future payment schedule development efforts. Section 1466.23(b)(4) of the EQIP regulation requires NRCS to adjust program payment percentages to a participant when NRCS enters into a formal agreement with partners who also provide financial support to the participant to help implement program initiatives. This adjustment ensures coordination of conservation investment under formal partnership agreements to encourage the voluntary adoption of practices and not as a windfall to producers. This adjustment does not apply to situations where NRCS and other conservation organizations are independently providing assistance to a producer.

23. Regional Conservation Partnership Program (RCPP)

Comment: NRCS received three comments on RCPP. The commenters recommended that RCPP requirements be subject to public comment, that NRCS explain the contribution requirement under RCPP, and identify in the EQIP regulation that EQIP is a covered program under RCPP.

NRCS Response: NRCS has held numerous stakeholder meetings across the country to obtain input concerning RCPP procedures and requirements, and incorporates this feedback into the APF. The RCPP statute requires partners to contribute a significant portion of the overall costs of the project. This contribution of resources is reflected in the partnership agreement entered into between NRCS and a partner. The overall cost includes all direct and indirect costs associated with implementation, from NRCS and partner(s). Partners may include funds they have received from other Federal sources as part of their contribution to the project, provided they submit a written commitment from the Federal agency confirming such funds can be used in conjunction with NRCS funds. NRCS provides greater priority to applicants that are able to contribute at least 50 percent of the resources needed to implement a project. A minor change has been made to the EQIP final rule to clarify that EQIP is a covered program under RCPP.

24. Regional Conservationist Approval

Comment: NRCS received seven comments on the removal of the requirement that the Regional Conservationist approve contracts obligating funds over $150,000. Three respondents expressed support for the removal, while four recommended that NRCS re-institute the requirement.

NRCS Response: The requirement concerning the approval of contracts by the Regional Conservationist has been removed from the regulation as it is an internal administrative matter. NRCS bases its internal review requirements in a manner that balances ensuring financial integrity with administrative efficiency. NRCS adjusts these requirements based upon findings from its quality assurance reviews. No changes were made to the regulation in response to these recommendations.

25. Regulatory Certifications

Comment: NRCS received 13 comments related to various regulatory certifications that appeared in the preamble of the interim rule. Namely, five commenters stated that consultation was required under Executive Order 13175 since they believe that EQIP imposes substantial costs on Tribal governments associated with environmental and cultural resource compliance; three comments stated that Executive Order 13132 required NRCS to coordinate with Conservation Districts, as well as other State and local governments, prior to publishing the EQIP interim rule; and five commenters stated NRCS failed to meet the requirements of Executive Order 13563 to improve coordination across agencies to reduce costs and simplify rules.

NRCS Response: NRCS met its responsibilities under Executive Orders 13175, 13132, and 13563. Section 5 of Executive Order 13175 provides that an agency should not promulgate any regulation that imposes substantial direct compliance costs on Tribal governments that is not required by statute unless funds necessary to pay the direct costs incurred by the Tribal government or the Tribe in complying with the regulation are provided by the Federal government; or alternatively, the agency, prior to the formal promulgation of the regulation, consulted with Tribal officials early in the process of developing the proposed regulation.

While Indian Tribes and their members are eligible to participate in EQIP, such participation is voluntary and does not mandate compliance costs on the part of the Tribe. Additionally, in response to the 2014 Act enactment, NRCS developed and implemented an outreach plan to obtain meaningful input from Indian Tribes regarding all NRCS conservation programs, including EQIP. NRCS consultation policies related to Executive Order 13175 are currently contained in the NRCS General Manual (GM) at 410 GM Part

405, 180 GM Parts 401 and 404, and 420 GM Part 401. For ongoing NRCS program activities, NRCS State Conservationists have primary responsibility for engaging with Indian Tribes and ensuring that NRCS' Tribal consultation responsibilities have been met.

Executive Order 13132 governs how agencies should develop policies that have federalism implications. Under Executive Order 13132, "policies that have federalism implications" refers to regulations that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EQIP is a voluntary program to provide assistance to producers of eligible lands. As stated in the EQIP interim rule preamble, EQIP does not have a substantial direct effect on States, the relationship between the Federal government and the States, or the distribution of power and responsibilities.

Section 2 of Executive Order 13563 requires that regulations be adopted through a process that involves public participation, and to the extent feasible and consistent with law, the open exchange of information and perspectives among State, local, and Tribal officials, experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole. Section 1246 of the 1985 Act requires publication of the EQIP regulation as an interim rule with an opportunity for public comment. The EQIP interim rule published on December 12, 2014, included a 60-day public comment period, during which the comments regarding Executive Order 13563 were received by NRCS.

26. Transparency Act Requirements

Comment: NRCS received five comments expressing concern about the applicability of the Federal Funding Accountability and Transparency Act (Transparency Act) requirements to EQIP contracts and the impact failure to comply with these requirements have upon agricultural producers.

NRCS Response: The Office of Management and Budget (OMB) regulations at 2 CFR parts 25 and 170 implement the Transparency Act and are government-wide requirements. The Transparency Act regulations apply to awards of financial assistance to non-Federal entities. EQIP assistance is financial assistance, thus the Transparency Act requirements apply to its implementation of awards to non-Federal entities. No changes were made in response to these comments.

27. Technical Service Providers (TSPs)

Comment: NRCS received one comment expressing approval for the utilization of TSPs.

NRCS Response: NRCS appreciates the comment and will continue to encourage the utilization of TSPs in the implementation of EQIP. No changes were necessitated by this comment.

28. Veteran Farmer or Ranchers

Comment: NRCS received five comments expressing support for the priority provided to veteran farmers and ranchers.

NRCS Response: NRCS appreciates the comment and will continue to encourage participation in EQIP by veteran farmers or ranchers. No changes were necessitated by this comment.

29. Wildlife Funding

Comment: NRCS received 16 comments expressing concern that 5 percent was the minimum funding available for wildlife-focused activities and that wildlife is not being partitioned clearly to demonstrate an additive effect. Some commenters recommended that wildlife funding be tracked based on ranking of resource concerns and not by targeting specific practices. Others recommended that only those 16 conservation practice standards that have fish and wildlife as a primary purpose should be used to track the wildlife fund requirement.

NRCS Response: The 2014 Act repealed WHIP and incorporated its purposes into EQIP. Under the 2014 Act, at least 5 percent of EQIP assistance must be targeted towards conservation practices with a specific purpose related to wildlife habitat. Since this is an administrative requirement, NRCS did not include it in the EQIP regulation, but discussed in the preamble of the interim rule how it will meet the requirement. In particular, NRCS identified that it will track its compliance with this requirement by identifying those conservation practices where wildlife habitat is the primary purpose. Out of more than 160 existing conservation practice standards, 16 have wildlife habitat as a primary purpose, in addition to approximately 45 standards that are often used to benefit wildlife. The preamble also identified that in certain situations, such as wildlife-focused initiatives, other practices may also be tracked where the practices are designed to achieve specific wildlife objectives.

Given the statutory language, it is appropriate to track both the 16 wildlife-specific practices and, in wildlife-focused initiatives, the 45 standards that are utilized to benefit wildlife. No changes were made to the regulation in response to these comments.

Regulatory Certifications

Executive Order 12866 and 13563

Executive Order 12866, "Regulatory Planning and Review," and Executive Order 13563, "Improving Regulation and Regulatory Review," directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. OMB designated this final rule a significant regulatory action. The administrative record is available for public inspection at NRCS National Headquarters located at 1400 Independence Avenue Southwest, South Building, Room 5831, Washington, DC 20250–2890. Pursuant to Executive Order 12866, NRCS conducted an economic analysis of the potential impacts associated with this program. A summary of the economic analysis can be found at the end of the regulatory certifications section of this preamble, and a copy of the analysis is available upon request from the Director of NRCS' Financial Assistance Programs Division or electronically at: *http://www.nrcs.usda.gov/programs/eqip/* under the EQIP Rules and Notices with Supporting Documents title.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute. NRCS did not prepare a regulatory flexibility analysis for this rule because NRCS is not required by 5 U.S.C. 553, or any other provision of law, to publish a notice of proposed rulemaking with respect to the subject matter of this rule. Regardless, NRCS has determined that this action, while mostly affecting small entities, will not have a significant economic impact on a substantial number of these small entities. NRCS made this determination based on the fact that this regulation is incentive-based, and therefore only impacts those who participate voluntarily in the program. Small entity applicants will not be affected to a greater extent than large entity applicants.

Congressional Review Act

Section 1246(c) of the 1985 Act, as amended by section 2608 of the 2014 Act, enables the Secretary of Agriculture to use the authority granted in section 808(2) of Title 5 of the United States Code to forego the Congressional Review Act's 60-day Congressional review, which delays the effective date of major regulations, if the agency finds that there is a good cause to do so. NRCS hereby determines that it has good cause to do so in order to meet the Congressional intent to have the conservation programs, authorized or amended under Title 7 of the 1985 Act, in effect as soon as possible. NRCS also determined it has good cause to forgo delaying the effective date given the critical need to let agricultural producers know what programmatic changes are being made so that they can make financial plans accordingly prior to planting season. For these reasons, this rule is effective upon publication in the **Federal Register**.

Environmental Analysis

NRCS prepared a programmatic EA in association with the EQIP rulemaking to aid in its compliance with NEPA when expending EQIP funds in implementing site-specific actions (40 CFR 1501.3(b)). As a result of the analysis, the Chief of NRCS determined that there will not be a significant impact to the human environment as a result of the changes implemented by this rule; therefore, an EIS was not required (40 CFR 1508.13). Only one comment was received on the EA. The commenter expressed that EQIP has not allowed for seed producers to adequately respond to programs that are announced after the seed production season and requested communication improvements. This comment did not provide new information that is relevant to environmental concerns or that bears on the proposed action or its impacts that warrants supplementing or revising the EQIP EA and Finding of No Significant Impact.

Two additional letters were received providing comments on the interim final rule recommending that NRCS undertake an EA of the effects of providing EQIP assistance to CAFOs. NRCS considered this input and determined it lacks discretion on whether to provide assistance to existing or expanding CAFOs. NRCS made this determination based on its review of the EQIP legislative history, the purposes of EQIP—which include assisting producers to meet regulatory requirements related to soil and water quality—and the fact that in the Farm Security and Rural Investment Act of 2002, Congress removed the restriction on providing financial assistance to large confined livestock operations to construct animal waste management facilities and required NRCS to direct 60 percent of its EQIP assistance to livestock producers. NRCS has, and will continue to conduct an environmental evaluation before providing EQIP financial assistance to any producer to determine the need for an EA or EIS. NRCS regulations in 7 CFR part 652 define the environmental evaluation as the part of the NRCS planning process that inventories and estimates the potential effects on the human environment of alternative solutions to resource problems. The environmental evaluation is used to determine the need for an EA or EIS, and aids in the consideration of alternatives and in the identification of available resources when an EA or EIS is not required (7 CFR 650.4(c)).

NRCS will also use the environmental evaluation to evaluate the environmental effects of specific requests to grant irrigation waivers. It is not possible to meaningfully analyze the effects of these waivers at a national level because of site-specific factors. NRCS would have to speculate as to the types of requests that might be received and granted, and NEPA does not require analysis of speculative actions. As a result, the programmatic EA prepared to identify the effects of the EQIP rule does not analyze the effects of waiver requests.

A copy of the EA and FONSI may be obtained from the following Web site: *http://www.nrcs.usda.gov/ea*. A hard copy may also be obtained in any of the following ways: (1) Send an email to *andree.duvarney@wdc.usda.gov* with "Request for EA" in the subject line, or (2) mail a written request to: National Environmental Coordinator, Natural Resources Conservation Service, Ecological Sciences Division, Post Office Box 2890, Washington, DC 20013–2890.

Civil Rights Impact Analysis

NRCS conservation programs apply to all persons equally regardless of their race, color, national origin, gender, sex, or disability status. Through its Civil Rights Impact Analysis, NRCS determined that the final rule discloses no disproportionately adverse impacts for minorities, women, or persons with disabilities. The national target of setting aside 5 percent of EQIP funds for socially disadvantaged farmers or ranchers, and an additional 5 percent of EQIP funds for beginning farmers or ranchers, as well as prioritizing veterans that are socially disadvantaged farmers or ranchers and beginning farmer or ranchers is expected to increase participation among these groups.

The Civil Rights Impact Analysis indicates that producers who are members of the protected groups have participated in NRCS conservation programs at the same rates as other producers. Extrapolating from historical participation data, it is reasonable to conclude that EQIP will continue to be administered in a nondiscriminatory manner. Outreach and communication strategies are in place to ensure all producers are provided the same information, enabling them to make informed compliance decisions regarding the use of their lands that will affect their participation in USDA programs. Therefore, this final rule portends no adverse civil rights implications for women, minorities, and persons with disabilities.

Paperwork Reduction Act

Section 1246 of the 1985 Act, as amended by the 2014 Act, requires that implementation of programs authorized by Title 7 of the 1985 Act be made without regard to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Therefore, NRCS is not reporting recordkeeping or estimated paperwork burden associated with this final rule.

Government Paperwork Elimination Act

NRCS is committed to compliance with the Government Paperwork Elimination Act and the Freedom to E-File Act, which require government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. To better accommodate public access, NRCS has developed an online application and information system for public use.

Executive Order 13175

This final rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that may have substantial direct effects on one or more Indian Tribes, the relationship between the Federal government and Indian Tribes, or the distribution of power and responsibilities between the Federal government and Indian Tribes. NRCS has assessed the impact of this final rule on Indian Tribes and determined that Tribal consultation under Executive Order 13175 does not apply. However, NRCS believes that consultation with Tribes is critical to ensuring that the program is administered in a fair and equitable manner. Therefore, NRCS has reviewed letters and comments submitted by and on behalf of Tribes during the public comment period leading to an additional public presentation and information gathering on the final rule with Tribes, Tribal representatives, and Tribal members on December 7th in Las Vegas, Nevada. NRCS made several changes to the final rule to address concerns raised by Tribes and Tribal representatives throughout the NRCS outreach and collaboration process. NRCS developed and implemented an outreach and collaboration plan to use while developing its policy regarding the 2014 Act. If a Tribe requests consultation, NRCS will work at the appropriate local, State, or national level, including with the USDA Office of Tribal Relations, to ensure meaningful consultation is provided where changes, additions, and modifications identified herein are not expressly mandated by Congress.

Unfunded Mandates Reform Act of 1995

Title 2 of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments or the private sector of $100 million or more in any 1 year. When such a statement is needed for a rule, section 205 of UMRA requires agencies to prepare a written statement, including a cost benefit assessment, for proposed and final rules with "Federal mandates" that may result in such expenditures for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates, as defined under Title 2 of UMRA, for State, local, and Tribal governments or the private sector. Therefore, a statement under section 202 of UMRA is not required.

Executive Order 13132

NRCS has considered this final rule in accordance with Executive Order 13132, issued August 4, 1999, and has determined that the final rule conforms with the Federalism principles set out in this Executive Order, would not impose any compliance costs on the States, and would not have substantial direct effects on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, NRCS concludes that this final rule does not have Federalism implications.

Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994

Pursuant to section 304 of the Federal Crop Insurance Reform Act of 1994 (Pub. L. 103–354), USDA has estimated that this regulation will not have an annual impact on the economy of $100,000,000 in 1994 dollars, and therefore, is not a major regulation. As such, a risk analysis was not conducted.

Executive Order 13211

This rule is not a significant regulatory action subject to Executive Order 13211, Energy Effects.

Registration and Reporting Requirements of the Federal Funding and Transparency Act of 2006

OMB published two regulations, codified at 2 CFR part 25 and 2 CFR part 170, to assist agencies and recipients of Federal financial assistance in complying with the Federal Funding Accountability and Transparency Act of 2006 (FFATA) (Pub. L. 109–282, as amended). Both regulations have implementation requirements effective as of October 1, 2010.

The regulations at 2 CFR part 25 require, with some exceptions, recipients of Federal financial assistance to apply for and receive a Dun and Bradstreet Universal Numbering Systems (DUNS) number and register in the Central Contractor Registry (CCR). The regulations at 2 CFR part 170 establish new requirements for Federal financial assistance applicants, recipients, and sub-recipients. The regulation provides standard wording that each agency must include in its awarding of financial assistance that requires recipients to report information about first-tier sub-awards and executive compensation under those awards.

The regulations at 2 CFR part 25 and 2 CFR part 170 apply to EQIP financial assistance provided to entities and, therefore, these registration and reporting requirements will continue to include in the requisite provisions as part of EQIP financial assistance contracts.

Regulatory Impact Analysis—Executive Summary

Pursuant to Executive Order 12866, Regulatory Planning and Review, NRCS has conducted a Regulatory Impact Analysis (RIA) of EQIP as pursuant to the changes of the 2014 Act. On December 12, 2014, an interim rule and an accompanying RIA, with request for comments, was published which implemented changes to EQIP necessitated by the enactment of the 2014 Act or required to implement administrative clarifications and streamlining improvements. NRCS received 331 comments from 65 respondents to the interim rule. NRCS received no comments on the RIA. The final rule makes permanent the changes proposed in the interim rule along with some minor adjustments based on public comments. NRCS determined that these minor adjustments would not significantly alter the RIA.

In considering alternatives for implementing EQIP, USDA followed the legislative intent to maximize beneficial conservation impacts, address natural resource concerns, establish an open participatory process, and provide flexible assistance to producers who apply appropriate conservation measures to comply with Federal, State, and Tribal environmental requirements. Because EQIP is a voluntary program, the program will not impose any obligation or burden upon agricultural producers who choose not to participate.

EQIP has been authorized by the Congress in the 2014 Farm Bill at $8 billion over the 5-year period beginning in FY 2014 and proceeding through 2018, with annual amounts of $1.35 billion in FY 2014, $1.60 billion in FY 2015, $1.65 billion in FY 2016, $1.65 billion in FY 2017, and $1.75 billion in FY 2018. EQIP and WHIP had been previously authorized under the 2008 Act with annual amounts of $1.32 billion for FY 2008, $1.37 billion in FY 2009, $1.55 billion in FY 2010, $1.66 billion in FY 2011, and $1.75 billion in FY 2012 to FY 2013. Despite this authorization, EQIP and WHIP received only $7.75 billion in funding from FY 2008 through FY 2013. Funds received annually over this period were $1.09 billion in FY 2008, $1.15 billion in FY 2009, $1.27 billion in FY 2010, $1.32 billion in FY 2011, $1.45 billion in FY 2012, and $1.47 billion in FY 2013. Since the enactment of the 2014 Act EQIP received $1.35 billion, the full amount authorized in FY 2014, but only $1.347 billion in FY 2015 rather the

$1.60 billion authorized by the 2014 Act.

The 1985 Act, as amended by the 2014 Act, makes several changes to EQIP. The changes include consolidating elements of the former WHIP into EQIP, expanding participation among military veteran farmers or ranchers, requiring that funds provided in advance that are not expended during the 90-day period beginning on the date of receipt of funds be returned, establishing an overall payment limitation over FY 2014 through FY 2018 of $450,000, providing that EQIP funding authorized by the 2014 Act remains available until expended, and requiring that at least 5 percent of available EQIP funds to be targeted for wildlife conservation practices for each fiscal year from 2014 to 2018. This 5 percent for wildlife habitat practices is based upon the total EQIP funding allocated as financial assistance available nationally for producer contracts. Based upon historical expenditures of wildlife-related practices in both WHIP and EQIP, and with emphasis to prioritize funding applications that address wildlife resource concerns, the agency anticipates that the actual funding associated with developing wildlife practices through EQIP will exceed the 5 percent national target. In FY 2014, about 6.5 percent of EQIP funds ($60.8 million) were devoted to wildlife conservation practices. Seven percent of EQIP funds are available for eligible RCPP contracts. Additional explanation regarding funding pools and EQIP program priorities is provided in the Background section of the preamble.

EQIP technical assistance and financial assistance facilitates the adoption of conservation practices that address natural resource concerns. Those practices improve on-site resource conditions and produce offsite environmental benefits for the public. Water erosion conservation practices reduce the flow of pollutants off of fields, thus improving freshwater and marine water quality, including protecting fish habitat, enhancing aquatic recreation opportunities, and reducing sedimentation of reservoirs, streams, and drainage channels. More efficient irrigation practices conserve scarce water, making it available for other uses. Wind erosion control practices improve air quality and some practices increase carbon in the soil profile. Wildlife habitat conservation practices increase wildlife habitat, enhance scenic value, and provide opportunities for recreation. A definition of "habitat development" was added and adopted to encompass the conservation practices that support the wildlife habitat activities authorized by section 1240B(g) of the 2014 Act. The term, as originally defined in the WHIP regulation, is added to EQIP at section 1466.3, "Definitions." The definition, consistent with EQIP authority to assist with implementation of conservation practices that include the specific technical purpose of habitat development, provides for the conservation of wildlife species.

Other impacts of conservation practices may accrue to the producer. Examples of these impacts include the maintenance of the long-term productivity of the land, improved irrigation efficiency, improved grazing productivity, more efficient crop use of animal waste and fertilizer, and increased profits from energy conservation.

Most of this rule's impacts consist of transfer payments from the Federal government to producers. While those transfers create incentives that very likely cause changes in the way society uses its resources, we lack data with which to quantify the resulting social costs or benefits. Given the existing limitation and lack of data, NRCS will investigate ways to quantify the incremental benefits obtained from this program. Despite the limitations on our ability to quantify and estimate the value of social costs or benefits from the implementation of conservation practices, EQIP, as amended under the 2014 Act, is expected to positively affect natural resources and mitigate environmental degradation. Results from the national Conservation Effects Assessment Project conducted by NRCS demonstrate that implementation of the types of conservation practices funded under EQIP reduce sediment and nutrient loss from agricultural fields and improve water quality nationwide.

The 2014 Act increases EQIP funding over the amount provided by Congress for both EQIP and WHIP from FY 2008 through FY 2013 by 24 percent on an annualized basis to $1.6 billion per year. From FY 2008 through FY 2013, the authorized level for EQIP and WHIP was a total of $9.585 billion, but annual restrictions on EQIP and WHIP obligations enacted in the annual appropriations bills resulted in the actual authority being $7.748 billion, for an annualized amount of $1.291 billion. In contrast, the authorized level for EQIP under the 2014 Act for FY 2014 through FY 2018 is $8 billion, for an annualized amount of $1.6 billion (this assumes future funding caps are set at the authorized amounts). Actual authority for EQIP funding in FY 2014 of $1.350 billion matched the amount authorized in the 2014 Act while restrictions limited actual EQIP funding in FY 2015 to $1.347 million. These changes reduce the authorized level of spending for EQIP for FY 2014 through FY 2018 to $7.747 million. Additionally, the 2014 Act changed the period of availability for EQIP funding from 1-year to no-year funding, which means the funds remain available until expended. Thus, any unobligated balance at the end of a fiscal year could be available for obligation in the subsequent year. It is estimated that the conservation practices implemented with this funding will continue to contribute to reductions of water and wind erosion on cropland, pasture, and rangeland; reduce nutrient losses to streams, rivers, lakes, and estuaries; increase wildlife habitat; and provide other private and public environmental benefits. It is also expected that continued implementation of practices which treat and manage animal waste through EQIP will directly contribute to improvements in water quality and associated improvements in air quality from, for example, reduction in emissions such as methane. NRCS estimates that the cost,[1] from both public and private sources, of implementing the conservation practices with EQIP funding will be $11,519 million dollars (FY 2014 through FY 2018). Cost estimates are presented in Table 1 below.

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[1] Public costs include total TA and FA funds outlined in the Congressional Budget Office's (CBO) scoring of the 2014 Act. Private costs are out-of-pocket costs paid voluntarily by participants.

TABLE 1—PROJECTED TECHNICAL ASSISTANCE AND TRANSFER PAYMENTS, AS AUTHORIZED, FY 2014–FY 2018[a]

	NRCS technical assistance	Transfer payment	Public costs	Private costs	Total costs
	million $	*million $*	*million $*	*million $*	*million $*
FY 2014[b]	$368.0	$982.0	$1,350.0	$654.6	$2,004.6
FY 2015[b]	360.0	987.0	1,347.0	657.9	2,004.9
FY 2016	445.5	1,204.5	1,650.0	803.6	2,453.6
FY 2017	445.5	1,204.5	1,650.0	803.6	2,453.6
FY 2018	472.5	1,277.5	1,750.0	852.2	2,602.2
Total	2,090.5	5,655.5	7,747.0	3,779.2	11,518.9

[a] Based on a historical average participant cost of 40 percent and a historical average technical assistance share of 27 percent.
[b] FY 2014 and FY 2015 represent actual funds received.

Conclusions

Program features of EQIP, except for the increase in wildlife focus, remains essentially unchanged from the 2008 Act. The increased funding over the period of FY 2014 through FY 2018 will increase the amount of conservation applied by agricultural producers, support continued improvement in the natural resource base (*i.e.* soil, water, air, and wildlife), and mitigate agriculture's potentially adverse effects on the environment. The statutory requirement that at least 5 percent of available EQIP funding be targeted to practices that address wildlife habitat will be met by focusing a portion of the funding on applications that address wildlife resource concerns.

Overall, the conservation effects resulting from transferring $5.7 billion to producers and providing $2.1 billion in technical assistance from FY 2014 through FY 2018 will be reflected in nine primary resource categories and lead to improvements in cropland and grazing land productivity, water quality, air quality, water use efficiency, energy use efficiency, carbon sequestration and wildlife habitat.

List of Subjects in 7 CFR Part 1466

Agricultural operations, Animal feeding operations, Conservation payments, Conservation practices, Contract, Forestry management, Natural resources, Payment rates, Soil and water conservation, Soil quality, Water quality and water conservation, Wildlife.

Accordingly, the interim rule amending 7 CFR part 1466, which was published at 79 FR 73953 on December 12, 2014, is adopted as a final rule with the following changes:

PART 1466—ENVIRONMENTAL QUALITY INCENTIVES PROGRAM

■ 1. The authority citation for part 1466 continues to read as follows:

Authority: 15 U.S.C. 714b and 714c; 16 U.S.C. 3839aa–3839–8.

■ 2. Amend § 1466.2 by revising paragraph (c) to read as follows:

§ 1466.2 Administration.

* * * * *

(c) No delegation in the administration of this part to lower organizational levels will preclude the Chief from making any determinations under this part, re-delegating to other organizational levels, or from reversing or modifying any determination made under this part. Since EQIP is a covered program under the Regional Conservation Partnership Program (RCPP), the Chief may modify or waive a discretionary provision of this part with respect to contracts entered into under RCPP if the Chief determines that such an adjustment is necessary to achieve the purposes of EQIP. Consistent with section 1271C(c)(3) of the Food Security Act of 1985, the Chief may also waive the applicability of the Adjusted Gross Income (AGI) limitation in section 1001D(b)(2) of the Food Security Act of 1985 for program participants if the Chief determines that the waiver is necessary to fulfill RCPP objectives.

* * * * *

■ 3. Amend § 1466.7 by revising paragraph (e) to read as follows:

§ 1466.7 EQIP plan of operations.

* * * * *

(e) If an EQIP plan of operations addresses forest land related resource concerns, the participant must implement conservation practices consistent with an approved forest management plan.

* * * * *

■ 4. Amend § 1466.20 by revising paragraphs (b) introductory text, (b)(1) introductory text, and (b)(5) to read as follows:

§ 1466.20 Application for contracts and selecting applications.

* * * * *

(b) In selecting EQIP applications, NRCS, with advice from the State Technical Committee, Tribal Conservation Advisory Council, or local working group, may establish ranking pools to address a specific resource concern, geographic area, or agricultural operation type or develop an evaluation process to prioritize and rank applications for funding that address national, State, and local priority resource concerns, taking into account the following guidelines:

(1) NRCS will select applications for funding based on applicant eligibility, fund availability, and the NRCS evaluation process. NRCS will rank applications according to the following factors related to conservation benefits to address identified resource concerns through implementation of conservation practices:

* * * * *

(5) The evaluation process will determine the order in which applications will be selected for funding. To improve administrative efficiency, NRCS may use screening factors as part of its evaluation process that may include sorting applications into high, medium, or low priority. If screening factors are used to designate a higher priority for ranking, all eligible applications with a higher priority and that address an eligible resource concern are ranked and considered for funding before ranking or considering for funding applications that are a lower priority. The approving authority for EQIP contracts will be NRCS.

* * * * *

■ 5. Amend § 1466.21 by revising paragraph (b)(3)(v) to read as follows:

§ 1466.21 Contract requirements.

* * * * *

(b) * * *
(3) * * *

(v) Implement conservation practices consistent with an approved forest management plan when the EQIP plan of operations includes forest-related practices that address resource concerns on NIPF,

* * * * *

■ 6. Amend § 1466.25 by revising paragraphs (b) through (d), redesignating paragraph (e) as paragraph (f), and adding a new paragraph (e) to read as follows:

§ 1466.25 Contract modifications and transfers of land.

* * * * *

(b) Within the time specified in the contract, the participant must provide NRCS with written notice regarding any voluntary or involuntary loss of control of any acreage under the EQIP contract, which includes changes in a participant's ownership structure or corporate form. Failure to provide timely notice will result in termination of the entire contract.

(c) Unless NRCS approves a transfer of contract rights under this paragraph (c), a participant losing control of any acreage will constitute a violation of the EQIP contract and NRCS will terminate the contract and require a participant to refund all or a portion of any financial assistance provided. NRCS may approve a transfer of the contract if:

(1) NRCS receives written notice that identifies the new producer who will take control of the acreage, as required in paragraph (d) of this section;

(2) The new producer meets program eligibility requirements within a reasonable time frame, as specified in the EQIP contract;

(3) The new producer agrees to assume the rights and responsibilities for the acreage under the contract; and

(4) NRCS determines that the purposes of the program will continue to be met despite the original participant's losing control of all or a portion of the land under contract.

(d) Until NRCS approves the transfer of contract rights, the new producer is not a participant in the program and may not receive payment for conservation activities commenced prior to approval of the contract transfer.

(e) NRCS may not approve a contract transfer and may terminate the contract in its entirety if NRCS determines that the loss of control is voluntary, the new producer is not eligible or willing to assume responsibilities under the contract, or the purposes of the program cannot be met.

* * * * *

Signed this 26th day of April, 2016, in Washington, DC.

Jason A. Weller,

Vice President, Commodity Credit Corporation, and Chief, Natural Resources Conservation Service.

[FR Doc. 2016–10161 Filed 5–11–16; 8:45 am]

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 730, 740, 742, 744, 746, 754, 762, 772, and 774

[Docket No. 160302175– 6175– 01]

RIN 0694–AG83

Removal of Short Supply License Requirements on Exports of Crude Oil

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) publishes this final rule to amend the Export Administration Regulations (EAR) to remove the short supply license requirements that, prior to the entry into force of the "Consolidated Appropriations Act, 2016" on December 18, 2015, applied to exports of crude oil from the United States. Specifically, this rule removes the Commerce Control List (CCL) entry and the corresponding short supply provisions in the EAR that required a license from BIS to export crude oil from the United States. This rule also amends certain other EAR provisions to reflect the removal of these short supply license requirements. The changes made by this rule are intended to bring the provisions of the EAR into full compliance with the act, which mandates that, apart from certain exemptions specified therein, "no official of the Federal Government shall impose or enforce any restriction on the export of crude oil." Consistent with the exceptions in the act, exports of crude oil continue to require authorization from BIS to embargoed or sanctioned countries or persons and to persons subject to a denial of export privileges.

DATES: This rule is effective May 12, 2016.

ADDRESSES: Send comments regarding this collection of information, including suggestions for reducing the burden, to Jasmeet Seehra, Office of Management and Budget (OMB), by email to *Jasmeet_K._Seehra@omb.eop.gov,* or by fax to (202) 395–7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, 14th Street & Pennsylvania Avenue NW., Room 2705, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Eileen Albanese, Director, Office of National Security and Technology Transfer Controls, Bureau of Industry and Security, Telephone: (202) 482–0092, Email: *eileen.albanese@bis.doc.gov.*

SUPPLEMENTARY INFORMATION: The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) to comply with the requirements of Division O, Title 1, Section 101 of Public Law 114–113 (the Consolidated Appropriations Act, 2016) concerning exports of crude oil from the United States. These provisions repeal Section 103 of the Energy Policy and Conservation Act (formerly, 42 U.S.C. 6212), which required that the President promulgate a rule prohibiting the export of crude oil, and mandate, instead, that "notwithstanding any other provision of law, except as provided in subsections (c) and (d) . . . no official of the Federal Government shall impose or enforce any restriction on the export of crude oil." Consistent with this requirement, this final rule amends part 754 of the EAR by removing and reserving § 754.2, which described the short supply license requirements and licensing policies that applied to exports of crude oil from the United States to all destinations. This rule also amends the Commerce Control List (CCL) in Supplement No. 1 to part 774 of the EAR by removing Export Control Classification Number (ECCN) 1C981, which controlled crude petroleum, including reconstituted crude petroleum, tar sands and crude shale oil listed in Supplement No. 1 to part 754 of the EAR (Crude Petroleum and Petroleum Products). In addition, this rule moves the definition of "crude oil," which previously appeared in § 754.2(a) of the EAR, to § 772.1 (Definitions of terms as used in the Export Administration Regulations (EAR)), because it continues to have relevance with respect to the end-user/end-use requirements in part 744 of the EAR and the embargoes and other special controls in part 746 of the EAR. The scope of this definition remains unchanged.

The effect of the changes described above is to remove the short supply license requirements previously applicable to crude oil, as controlled under ECCN 1C981, thereby making crude oil an EAR99 item (*i.e.,* subject to the EAR, as described in § 734.3(a), but no longer listed on the CCL). As such, crude oil exports will now be treated similarly to exports of petroleum products listed in Supplement No. 1 to part 754 that have not been produced or derived from the Naval Petroleum Reserves (NPR) or become available for export as a result of an exchange of any NPR produced or derived commodities (such petroleum products are not controlled under ECCN 1C980, 1C982, 1C983, or 1C984 on the CCL, but are designated as EAR99 items, instead). As an EAR99 item, crude oil remains subject to the EAR, as described in § 734.3(a) of the EAR, and exports of crude oil continue to require authorization from BIS to embargoed or sanctioned countries or persons and to persons subject to a denial of export privileges, as described in parts 744, 746, and 764 of the EAR. The continuance of these EAR controls is consistent with the exemptions stated in Division O, Title 1, Section 101, subsections (c) and (d) of Public Law 114–113.

This final rule also amends certain other provisions in the EAR to reflect the removal of the short supply license requirements on crude oil. Specifically, this rule makes additional amendments to part 754 by removing and reserving paragraph (b)(1)(i) in § 754.1 and by removing and reserving Supplement No. 3 to part 754 (Statutory Provisions Dealing with Exports of Crude Oil). This rule also removes references to § 754.2 from Supplement No. 1 to part 730 and § 762.2(b)(39). In addition, this rule amends § 740.15 (License Exception AVS) by removing the parenthetical reference to § 754.2 from § 740.15(b)(3) and by removing the Note to paragraph (c)(3), which also referenced § 754.2. This rule also removes references to ECCN 1C981 from § 742.1(b)(1) and § 746.7(a)(1) of the EAR. In § 744.7 (Restrictions on Certain Exports to and for the use of Certain Foreign Vessels or Aircraft), paragraphs (b)(3)(i) and (ii) are revised to remove the exclusions that previously applied to crude oil and blends of crude oil with other petroleum products, because such items were subject to the short supply controls described in § 754.2 of the EAR.

Finally, this rule removes authority citations for statutory provisions dealing with restrictions on the exports of crude oil, which no longer provide BIS with enforcement authority, based on Division O, Title 1, Section 101, subsection (b) of Public Law 114–113, which prohibits officials of the Federal Government from imposing or enforcing any restriction on the export of crude oil "notwithstanding any other provision of law." Specifically, this rule removes the authority citations to 30 U.S.C. 185(s), 30 U.S.C. 185(u), and 43 U.S.C. 1354 from parts 730, 754, and 774 of the EAR.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013), and as extended by the Notice of August 7, 2015 (80 FR 48233 (Aug. 11, 2015)), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*). BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222 as amended by Executive Order 13637.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a "significant regulatory action," although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule contains a collection of information subject to the requirements of the PRA. This collection has been approved by OMB under Control Number 0694–0088 (Multi-Purpose Application), which carries a burden hour estimate of 58 minutes to prepare and submit form BIS–748. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Jasmeet Seehra, Office of Management and Budget, and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, as indicated in the **ADDRESSES** section of this rule.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (APA) (5 U.S.C. 553) requiring notice of proposed rulemaking and the opportunity for public participation are waived for good cause, because they are "unnecessary" and "contrary to the public interest." (See 5 U.S.C. 553(b)(B)). This rule brings the Export Administration Regulations (EAR) into conformity with the Congressional mandate in Division O, Title 1, Section 101 of Public Law 114–113, which states that "notwithstanding any other provision of law, except as provided in subsections (c) and (d) . . . no official of the Federal Government shall impose or enforce any restrictions on the export of crude oil." A delay of this rulemaking to allow for notice and public comment would be "unnecessary," within the context of the APA, because continuance of the controls in § 754.2 of the EAR would be contrary to the explicit mandate in Public Law 114–113 against the imposition or enforcement of any restriction on the export of crude oil by an official of the Federal Government. Under such circumstances, the public interest would not be served by soliciting comments on the removal of these controls. A delay of this rulemaking to allow for notice and public comment also would be "contrary to the public interest," within the context of the APA, because continuance of the controls in § 754.2 of the EAR would result in unnecessary confusion due to the obvious contradiction between the short supply license requirements for crude oil, as described in § 754.2 of the EAR prior to the publication of this rule, and the Congressional mandate in Public Law 114–113, which prohibits such license requirements. Furthermore, the confusion resulting from any delay to allow for notice and comment would be contrary to the public interest, as stated in Public Law 114–113, which is "to promote the efficient exploration, production, storage, supply, marketing, pricing, and regulation of energy resources, including fossil fuels." Specifically, the obvious contradiction between the requirements previously described in § 754.2 of the EAR and the mandate in Public Law 114–113 might discourage some persons from pursuing crude oil export opportunities, thereby resulting in significant economic losses due to lost sales. At best, the confusion

caused by this contradiction likely would result in unnecessary delays, which also can involve significant economic costs.

The provision of the Administrative Procedure Act (APA) (5 U.S.C. 553) requiring a 30-day delay in effectiveness is also waived for good cause. (5 U.S.C. 553(d)(3)). The amendments to the EAR contained in this final rule are required to make the EAR conform to the Congressional mandate in Public Law 114–113, which states that "except as provided in subsections (c) and (d) . . . no official of the Federal Government shall impose or enforce any restrictions on the export of crude oil." A delay of this rulemaking to allow for a 30-day delay in effectiveness would be "unnecessary," within the context of the APA, because continuance of the controls in § 754.2 of the EAR would be contrary to the explicit mandate in Public Law 114–113 and, as such, would not serve the public interest. A delay of this rulemaking to allow for a 30-day delay in effectiveness, also would be "contrary to the public interest," within the context of the APA, because such a delay would result in unnecessary confusion caused by the contradiction between the EAR's short supply license requirements for crude oil and the Congressional mandate in Public Law 114–113, as described above. In addition, any delay to allow for notice and comment would be contrary to the public interest, as stated in Public Law 114–113 and reiterated above.

Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this regulation is issued in final form.

List of Subjects

15 CFR Part 730

Administrative practice and procedure, Advisory committees, Exports, Reporting and recordkeeping requirements, Strategic and critical materials.

15 CFR Part 740

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 742

Administrative practice and procedure, Chemicals, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 744

Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 746

Exports, Reporting and recordkeeping requirements.

15 CFR Part 754

Agricultural commodities, Exports, Forests and forest products, Horses, Petroleum, Reporting and recordkeeping requirements.

15 CFR Part 762

Administrative practice and procedure, Business and industry, Confidential business information, Exports, Reporting and recordkeeping requirements.

15 CFR Part 772

Exports.

15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, parts 730, 740, 742, 744, 746, 754, 762, 772, and 774 of the Export Administration Regulations (15 CFR parts 730–774) are amended as follows:

PART 730—[AMENDED]

■ 1. The authority citation for part 730 is revised to read as follows:

Authority: 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c; 22 U.S.C. 2151 note; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 42 U.S.C. 2139a; 15 U.S.C. 1824a; 50 U.S.C. 4305; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 11912, 41 FR 15825, 3 CFR, 1976 Comp., p. 114; E.O. 12002, 42 FR 35623, 3 CFR, 1977 Comp., p. 133; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12214, 45 FR 29783, 3 CFR, 1980 Comp., p. 256; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 179; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 12981, 60 FR 62981, 3 CFR, 1995 Comp., p. 419; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p 168; E.O. 13637, 78 FR 16129, 3 CFR, 2014 Comp., p. 223; Notice of May 6, 2015, 80 FR 26815 (May 8, 2015); Notice of August 7, 2015, 80 FR 48233 (August 11, 2015); Notice of September 18, 2015, 80 FR 57281 (September 22, 2015); Notice of November 12, 2015, 80 FR 70667 (November 13, 2015); Notice of January 20, 2016, 81 FR 3937 (January 22, 2016).

Supplement No. 1 to Part 730—[Amended]

■ 2. Supplement No. 1 to part 730 is amended by revising the entries for Collection number "0694–0137" and Collection number "0607–0152" to read as follows:

Supplement No. 1 to Part 730—Information Collection Requirements Under the Paperwork Reduction Act: OMB Control Numbers

* * * * *

Collection No.	Title	Reference in the EAR
* * *	* *	* *
0694–0137	License Exceptions and Exclusions	§ 734.4, Supplement No. 2 to part 734, §§ 740.3(d), 740.4(c), 740.9(a)(2)(viii)(B), 740.9(c), 740.13(e), 740.12(b)(7), 740.17, 740.18, Supp. No. 2 to part 740, §§ 742.15, 743.1, 743.3, 754.4, 762.2(b) and Supplement No. 1 to part 774.
0607–0152	Automated Export System (AES) Program.	§§ 740.1(d), 740.3(a)(3), 754.4(c), 758.1, 758.2, and 758.3 of the EAR.

PART 740—[AMENDED]

■ 3. The authority citation for part 740 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 7201 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015).

■ 4. Section 740.15 is amended by revising paragraph (b)(3) introductory text and by removing the note to paragraph (c)(3).

The revision reads as follows:

§ 740.15 Aircraft, vessels, and spacecraft (AVS).

* * * * *

(b) * * *

(3) *Ship and plane stores.* Usual and reasonable kinds and quantities of the following commodities may be exported for use or consumption on board an aircraft or vessel of any registry during the outgoing and immediate return flight or voyage.

* * * * *

PART 742—[AMENDED]

■ 5. The authority citation for part 742 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; Sec. 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23, 68 FR 26459, 3 CFR, 2004 Comp., p. 320; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015); Notice of November 12, 2015, 80 FR 70667 (November 13, 2015).

§ 742.1 [Amended]

■ 6. In § 742.1, remove the phrase "1C981 (Crude petroleum, including reconstituted crude petroleum, tar sands, and crude shale oil);" where it appears in the second sentence of paragraph (b)(1).

PART 744—[AMENDED]

■ 7. The authority citation for part 744 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015); Notice of September 18, 2015, 80 FR 57281 (September 22, 2015); Notice of November 12, 2015, 80 FR 70667 (November 13, 2015); Notice of January 20, 2016, 81 FR 3937 (January 22, 2016).

■ 8. In § 744.7, revise paragraphs (b)(3)(i) and (ii) to read as follows:

§ 744.7 Restrictions on certain exports to and for the use of certain foreign vessels or aircraft.

* * * * *

(b) * * *

(3) * * *

(i) Fuel, including crude oil, petroleum products other than crude oil that are of non-Naval Petroleum Reserves origin or derivation (see § 754.3 of the EAR), and blends of crude oil with such petroleum products;

(ii) Deck, engine, and steward department stores, provisions, and supplies for both port and voyage requirements, provided that any petroleum products other than crude oil which are listed in Supplement No. 1 to part 754 of the EAR are of non-Naval Petroleum Reserves origin or derivation (see § 754.3 of the EAR);

* * * * *

PART 746—[AMENDED]

■ 9. The authority citation for part 746 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 287c; Sec 1503, Pub. L. 108–11, 117 Stat. 559; 22 U.S.C. 6004; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p 168; Presidential Determination 2003–23, 68 FR 26459, 3 CFR, 2004 Comp., p. 320; Presidential Determination 2007–7, 72 FR 1899, 3 CFR, 2006 Comp., p. 325; Notice of May 6, 2015, 80 FR 26815 (May 8, 2015); Notice of August 7, 2015, 80 FR 48233 (August 11, 2015).

§ 746.7 [Amended]

■ 10. In § 746.7, remove "1C981," where it appears in paragraph (a)(1).

PART 754—[AMENDED]

■ 11. The authority citation for part 754 is revised to read as follows:

Authority: 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 15 U.S.C. 1824a; E.O. 11912, 41 FR 15825, 3 CFR, 1976 Comp., p. 114; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015).

§ 754.1 [Amended]

■ 12. Section 754.1 is amended by removing and reserving paragraph (b)(1)(i).

§ 754.2 [Removed]

■ 13. Section 754.2 is removed and reserved.

■ 14. In Supplement No. 1 to part 754, revise the first sentence in the introductory text to read as follows:

Supplement No. 1 to Part 754—Crude Petroleum and Petroleum Products

This Supplement provides relevant Schedule B numbers and commodity descriptions for crude oil (EAR99) and for petroleum products other than crude oil that are controlled by ECCN 1C980, 1C982, 1C983, or 1C984. * * *

* * * * *

Supplement No. 3 to Part 754—[Removed and Reserved]

■ 15. Supplement No. 3 to part 754 is removed and reserved.

PART 762—[AMENDED]

■ 16. The authority citation for part 762 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015).

§ 762.2 [Amended]

■ 17. Section 762.2 is amended by removing and reserving paragraph (b)(39).

PART 772—[AMENDED]

■ 18. The authority citation for part 772 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015).

■ 19. Section 772.1 is amended by adding in alphabetical order a definition for *crude oil* to read as follows:

§ 772.1 Definitions of terms as used in the Export Administration Regulations (EAR).

* * * * *

Crude oil. A mixture of hydrocarbons that existed in liquid phase in underground reservoirs, remains liquid at atmospheric pressure (after passing through surface separating facilities), and has not been processed through a crude oil distillation tower. Crude oil includes reconstituted crude petroleum, lease condensate, and liquid hydrocarbons produced from tar sands, gilsonite, and oil shale. Drip gases are also included, but topped crude oil, residual oil, and other finished and unfinished oils are excluded.

* * * * *

PART 774—[AMENDED]

■ 20. The authority citation for part 774 is revised to read as follows:

Authority: 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 42 U.S.C. 2139a; 15 U.S.C. 1824a; 50 U.S.C. 4305; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015).

Supplement No. 1 to Part 774—[Amended]

■ 21. In Supplement No. 1 to Part 774 (the Commerce Control List), ECCN 1C981 is removed.

Dated: May 5, 2016.

Eric L. Hirschhorn,

Under Secretary for Industry and Security.

[FR Doc. 2016–11047 Filed 5–11–16; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–435]

Schedules of Controlled Substances: Placement of Brivaracetam Into Schedule V

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Interim final rule, with request for comments.

SUMMARY: The Drug Enforcement Administration is placing the substance brivaracetam ((2*S*)-2-[(4*R*)-2-oxo-4-propylpyrrolidin-1-yl] butanamide) (also referred to as BRV; UCB–34714; Briviact) (including its salts) into schedule V of the Controlled Substances Act. This scheduling action is pursuant to the Controlled Substances Act, as revised by the Improving Regulatory Transparency for New Medical Therapies Act which was signed into law on November 25, 2015.

DATES: The effective date of this rulemaking is May 12, 2016. Interested persons may file written comments on this rulemaking in accordance with 21 CFR 1308.43(g). Electronic comments must be submitted, and written comments must be postmarked, on or before June 13, 2016. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after 11:59 p.m. Eastern Time on the last day of the comment period.

Interested persons, defined at 21 CFR 1300.01 as those "adversely affected or aggrieved by any rule or proposed rule issuable pursuant to section 201 of the Act (21 U.S.C. 811)," may file a request for hearing or waiver of hearing pursuant to 21 CFR 1308.44. Requests for hearing and waivers of an opportunity for a hearing or to participate in a hearing must be received on or before June 13, 2016.

ADDRESSES: To ensure proper handling of comments, please reference "Docket No. DEA–435" on all correspondence, including any attachments.

- *Electronic comments:* The Drug Enforcement Administration encourages that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the Web page or attach a file for lengthier comments. Please go to *http://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon completion of your submission, you will receive a Comment Tracking Number for your comment. Please be aware that submitted comments are not instantaneously available for public view on Regulations.gov. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.
- *Paper comments:* Paper comments that duplicate the electronic submission are not necessary and are discouraged. Should you wish to mail a paper comment *in lieu of* an electronic comment, it should be sent via regular or express mail to: Drug Enforcement Administration, Attn: DEA Federal Register Representative/ODW, 8701 Morrissette Drive, Springfield, VA 22152.
- *Hearing requests:* All requests for hearing and waivers of participation must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing and waivers of participation should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/ODW, 8701 Morrissette Drive, Springfield, Virginia 22152.

FOR FURTHER INFORMATION CONTACT: Barbara J. Boockholdt, Office of Diversion Control, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (202) 598–6812.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received are considered part of the public record. They will, unless reasonable cause is given, be made available by the Drug Enforcement Administration (DEA) for public inspection online at *http://www.regulations.gov.* Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter. The Freedom of Information Act (FOIA) applies to all comments received. If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be made publicly available, you must include the phrase "PERSONAL IDENTIFYING INFORMATION" in the first paragraph of your comment. You must also place all of the personal identifying information you do not want made publicly available in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be made publicly available, you must include the phrase "CONFIDENTIAL BUSINESS INFORMATION" in the first paragraph of your comment. You must also prominently identify the confidential business information to be redacted within the comment.

Comments containing personal identifying information and confidential business information identified as directed above will generally be made publicly available in redacted form. If a comment has so much confidential business information or personal identifying information that it cannot be effectively redacted, all or part of that comment may not be made publicly available. Comments posted to *http://www.regulations.gov* may include any personal identifying information (such as name, address, and phone number) included in the text of your electronic submission that is not identified as directed above as confidential.

An electronic copy of this document and supplemental information, including the complete Department of Health and Human Services and Drug Enforcement Administration eight-factor analyses, to this interim final rule are available at *http://www.regulations.gov* for easy reference.

Request for Hearing, Notice of Appearance at Hearing, or Waiver of Participation in Hearing

Pursuant to 21 U.S.C. 811(a), this action is a formal rulemaking "on the record after opportunity for a hearing." Such proceedings are conducted pursuant to the provisions of the Administrative Procedure Act (APA), 5 U.S.C. 551–559. 21 CFR 1308.41–1308.45; 21 CFR part 1316, subpart D. In accordance with 21 CFR 1308.44(a)–

(c), requests for a hearing, notices of appearance, and waivers of an opportunity for a hearing or to participate in a hearing may be submitted only by interested persons, defined as those "adversely affected or aggrieved by any rule or proposed rule issuable pursuant to section 201 of the Act (21 U.S.C. 811)." 21 CFR 1300.01. Requests for a hearing and notices of participation must conform to the requirements of 21 CFR 1308.44(a) or (b), as applicable, and include a statement of the interest of the person in the proceeding and the objections or issues, if any, concerning which the person desires to be heard. Any waiver of an opportunity for a hearing must conform to the requirements of 21 CFR 1308.44(c) including a written statement regarding the interested person's position on the matters of fact and law involved in any hearing.

Please note that pursuant to 21 U.S.C. 811(a), the purpose and subject matter of the hearing are restricted to "(A) find[ing] that such drug or other substance has a potential for abuse, and (B) mak[ing] with respect to such drug or other substance the findings prescribed by subsection (b) of section 812 of this title for the schedule in which such drug is to be placed. * * *" Requests for a hearing and waivers of participation in the hearing should be submitted to DEA using the address information provided above.

Legal Authority

The DEA implements and enforces titles II and III of the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended. 21 U.S.C. 801–971. Titles II and III are referred to as the "Controlled Substances Act" and the "Controlled Substances Import and Export Act," respectively, and are collectively referred to as the "Controlled Substances Act" or the "CSA" for the purpose of this action. The DEA publishes the implementing regulations for these statutes in title 21 of the Code of Federal Regulations (CFR), chapter II. The CSA and its implementing regulations are designed to prevent, detect, and eliminate the diversion of controlled substances and listed chemicals into the illicit market while providing for the legitimate medical, scientific, research, and industrial needs of the United States. Controlled substances have the potential for abuse and dependence and are controlled to protect the public health and safety.

Under the CSA, controlled substances are classified into one of five schedules based upon their potential for abuse, their currently accepted medical use in treatment in the United States, and the degree of dependence the substance may cause. 21 U.S.C. 812. The initial schedules of controlled substances established by Congress are found at 21 U.S.C. 812(c), and the current list of all scheduled substances is published at 21 CFR part 1308.

Pursuant to 21 U.S.C. 811(a)(1), the Attorney General may, by rule, "add to such a schedule or transfer between such schedules any drug or other substance if he * * * finds that such drug or other substance has a potential for abuse, and * * * makes with respect to such drug or other substance the findings prescribed by subsection (b) of section 812 of this title for the schedule in which such drug is to be placed * * *" The Attorney General has delegated this scheduling authority under 21 U.S.C. 811 to the Administrator of the DEA. 28 CFR 0.100.

The CSA provides that scheduling of any drug or other substance may be initiated by the Attorney General (1) on her own motion; (2) at the request of the Secretary of Health and Human Services (HHS); or (3) on the petition of any interested party. 21 U.S.C. 811(a). This action imposes the regulatory controls and administrative, civil, and criminal sanctions of schedule V controlled substances for any person who handles or proposes to handle BRV.

The Improving Regulatory Transparency for New Medical Therapies Act (Pub. L. 114–89) was signed into law on November 25, 2015. This law amended 21 U.S.C. 811 and states that in cases where a new drug is (1) approved by the Department of Health and Human Services (HHS) and (2) HHS recommends control in CSA schedule II–V, DEA shall issue an interim final rule scheduling the drug, within 90 days.

The law further states that the 90-day timeframe starts the later of (1) the date DEA receives the HHS scientific and medical evaluation/scheduling recommendation or (2) the date DEA receives notice of drug approval by HHS. In addition, the law specifies that the rulemaking shall become immediately effective as an interim final rule without requiring the DEA to demonstrate good cause therefor.

Specifically, Public Law 114–89 revised section 201 of the CSA (21 U.S.C. 811) by inserting after subsection (i) a new paragraph (j), which requires that with respect to a drug referred to in subsection (f), if the Secretary recommends that the Attorney General control the drug in schedule II, III, IV, or V pursuant to subsections (a) and (b), the Attorney General is required to, within 90 days, issue an interim final rule controlling the drug in accordance with such subsections and 21 U.S.C. 812(b) using the specified procedures. For purposes of calculating the 90 days, Public Law 114–89 states that such date shall be the later of the date on which the Attorney General receives the scientific and medical evaluation and the scheduling recommendation from the Secretary in accordance with subsection (b), or the date on which the Attorney General receives notification from the Secretary that the Secretary has approved an application under section 505(c), 512, or 571 of the Federal Food, Drug, and Cosmetic Act or section 351(a) of the Public Health Service Act, or indexed a drug under section 572 of the Federal Food, Drug, and Cosmetic Act, with respect to the drug described in paragraph (1). Public Law 114–89 further stipulates that a rule issued by the Attorney General under paragraph (1) becomes immediately effective as an interim final rule without requiring the Attorney General to demonstrate good cause and requires that the interim final rule give interested persons the opportunity to comment and to request a hearing. After the conclusion of such proceedings, the Attorney General must issue a final rule in accordance with the scheduling criteria of subsections 21 U.S.C. 811(b), (c), and (d) of this section and 21 U.S.C. 812(b).

Background

Brivaracetam ((2S)-2-[(4R)-2-oxo-4-propylpyrrolidin-1-yl] butanamide) (also referred to as BRV; UCB–34714; Briviact) is a new molecular entity with central nervous system (CNS) depressant properties. BRV is known to be a high affinity ligand for the synaptic vesicle protein, SV2A, which is found on excitatory synapses in the brain. On November 22, 2014, UCB Inc. (Sponsor) submitted three New Drug Applications (NDAs) to the U.S. Food and Drug Administration (FDA) for the tablet, oral, and intravenous formulations of BRV. The FDA accepted the NDA filings for BRV on January 21, 2015.

On March 28, 2016 the DEA received notification that HHS/FDA approved BRV as an add-on treatment to other medications to treat partial onset seizures in patients age 16 years and older with epilepsy.

Determination to Schedule BRV

Pursuant to 21 U.S.C. 811(a)(1), proceedings to add a drug or substance to those controlled under the CSA may be initiated by request of the Secretary of the HHS.[1] On September 8, 2015, the HHS provided the DEA with a scientific and medical evaluation document prepared by the FDA entitled "Basis for the Recommendation to Place Brivaracetam in Schedule V of the Controlled Substances Act." Pursuant to 21 U.S.C. 811(b), this document contained an eight-factor analysis of the abuse potential of BRV as a new drug, along with the HHS' recommendation to control BRV under schedule V of the CSA.

In response, in December 2015, the DEA reviewed the scientific and medical evaluation and scheduling recommendation provided by the HHS, along with all other relevant data, and completed its own eight-factor review document pursuant to 21 U.S.C. 811(c). The DEA concluded that BRV met the 21 U.S.C. 812(b)(5) criteria for placement in schedule V of the CSA. Subsequently, on March 28, 2016, the DEA received notification that HHS/FDA approved three NDAs for BRV (*see* Background section).

Pursuant to the provisions of the Improving Regulatory Transparency for New Medical Therapies Act (Pub. L. 114–89), and based on the HHS recommendation, NDA approvals by HHS/FDA, and DEA's determination, DEA is issuing this interim final rule to schedule brivaracetam ((2*S*)-2-[(4*R*)-2-oxo-4-propylpyrrolidin-1-yl] butanamide) (including its salts) as a controlled substance under the CSA.

Included below is a brief summary of each factor as analyzed by the HHS and the DEA, and as considered by the DEA in its scheduling action. Please note that both the DEA and HHS analyses are available in their entirety under "Supporting Documents" in the public docket for this interim final rule at *http://www.regulations.gov,* under Docket Number "DEA–435." Full analysis of, and citations to, the information referenced in the summary may also be found in the supporting and related material.

1. *The Drug's Actual or Relative Potential for Abuse:* BRV is a new chemical entity and has not been marketed in the United States or in any other country; information on actual abuse of BRV is not available. The HHS characterized BRV as related in its action to lacasamide and ezogabine, which are both schedule V CNS depressant anti-epileptics (AEDs). Based on data submitted by the Sponsor in their NDAs, the HHS indicated that administration of BRV in mice, rats, and dogs resulted in CNS depressant effects, including decreased locomotor activity and reactivity, motor incoordination, and ataxia.

BRV is not self-administered in animals and, unlike schedule IV benzodiazepines and the schedule III AED perampanel, lacks pentobarbital-like (schedule II) discriminative stimulus and reinforcing effects (HHS review, 2015). In humans, BRV is most similar to the schedule V AEDs lacosamide, ezogabine, and pregabalin in producing positive subjective effects without producing sedation and withdrawal following drug discontinuation that is observed with schedule IV benzodiazepines. Based on this collective evidence, the HHS concluded that BRV has an abuse potential that is most similar to AEDs in schedule V.

2. *Scientific Evidence of the Drug's Pharmacological Effects, if Known:* BRV selectively binds with high affinity to synaptic vesicle protein 2A (SV2A). It produces reverse inhibition caused by negative modulators of gamma aminobutyric acid (GABA) and glycine and inhibits sodium (Na+) channels. These sites appear to underlie pharmacological activity of BRV.

In rats, BRV at high doses partially generalizes to the schedule IV benzodiazepine chlordiazepoxide. BRV, across a wide range of doses, neither initiates nor maintains self-administration in rats trained to self-administer cocaine. Human studies have reported that healthy individuals may experience euphoria, sedation, and a drunken-like feeling following BRV administration. When treatment-emergent adverse events (TEAEs)[2] were pooled across several clinical BRV studies, the most common TEAEs were dizziness and sedative-related events such as fatigue, extreme drowsiness, and extreme weakness. In a human abuse potential study, the oral abuse potential, safety, tolerability, and pharmacokinetics of BRV (50 mg, 200 mg, and 1000 mg) were compared to 1.5 and 3.0 mg of the schedule IV CNS depressant alprazolam (ALP) and placebo. When surveyed, for all doses of BRV, there was an increase of drug likability, feeling of a high, and taking the drug again in comparison to placebo. The HHS mentioned that individuals who took BRV had fewer sedative, euphoric, stimulant, dizziness, and overall negative subjective effects compared to ALP.

3. *The State of Current Scientific Knowledge Regarding Brivaracetam:* The chemical name for brivaracetam is (2S)-2-[(4R)-2-oxo-4-propylpyrrolidin-1-yl] butanamide. Other names include BRV and UCB–34714. The Chemical Abstract Services number (CAS #) of BRV is: 357336–20–0. BRV is a racetam derivative.[3] As the HHS noted, BRV does not have structural similarities to any other scheduled AED or to any major classes of abused sedative drugs with noted euphoric effects. Chemical synthesis of BRV is considered highly complex and includes several steps, reagents and specialized equipment.

BRV is readily soluble in water at up to 700 mg/mL. In an *in vitro* oral tablet dissolution evaluation, BRV oral tablets were placed in a buffer (pH 6.4) for 16 hours. Approximately 86–96% of BRV was released after 16 hours in the buffer; 14–30% of BRV was released following 1 hour and 40–66% BRV was released after 4 hours.

Following oral ingestion, BRV is rapidly and completely absorbed. In healthy young males, the half-life of BRV was determined to be approximately 9 hours. According to the HHS, the half-life of BRV is decreased to 6 hours when a repeated oral dose of 800 mg/day BRV is administered. The HHS noted that BRV binds weakly to plasma proteins and is extensively metabolized through several pathways. Clearance through the kidneys represents 5–10% of the total clearance and only 3–7% of the parent compound (BRV) was detected in the urine. The three main metabolites of BRV were detected in urine and according to the HHS, these metabolites are relatively inactive. One BRV metabolite was characterized as having a potency that was 20 times less than BRV, and this metabolite was not detected in human plasma and represented less than 3% of the dose in urine.

4. *Its History and Current Pattern of Abuse:* As noted by the HHS, information on the history and current pattern of abuse of BRV is not available since this drug is currently not marketed in any country. A review of the animal and human data indicates that BRV has an abuse potential similar to other schedule V AEDs. If BRV were to be

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[1] As set forth in a memorandum of understanding entered into by the HHS, the FDA, and the National Institute on Drug Abuse (NIDA), the FDA acts as the lead agency within the HHS in carrying out the Secretary's scheduling responsibilities under the CSA, with the concurrence of the NIDA. 50 FR 9518, Mar. 8, 1985. The Secretary of the HHS has delegated to the Assistant Secretary for Health of the HHS the authority to make domestic drug scheduling recommendations. 58 FR 35460, July 1, 1993.

[2] Treatment-emergent adverse event (TEAE): An event or unexpected medical occurrence (*e.g.* adverse event) which first appears during treatment with a drug or substance. TEAEs are typically absent prior to the onset of treatment or would have been exacerbated relative to pre-treatment conditions.

[3] Racetams are a class of drugs that have a pyrrolidoline center.

approved for medical use, the HHS indicated that BRV would be abused for its euphoric properties and other abuse-related TEAEs that were reported in human clinical studies. Based on the available information, the HHS concluded that the history and pattern of abuse of BRV will be similar to other schedule V CNS depressants.

5. *The Scope, Duration, and Significance of Abuse:* As noted by the HHS, information on the scope, duration, and significance of abuse of BRV is not available since this drug is currently not marketed in any country. Results from animal and human studies suggest that there is abuse potential associated with BRV and if marketed in the United States, it is likely that BRV will be abused similar to other AEDs that are CNS depressants. The HHS stated that it is unlikely that epileptic individuals (the population expected to take this drug) will abuse BRV. The HHS concluded that based on abuse potential similarities between BRV and other schedule V AEDs, it is likely that the scope, duration, and significance of abuse of BRV will be similar to these compounds.

6. *What, if any, Risk There is to the Public Health:* The HHS characterized BRV's drug abuse potential to be similar to schedule V AEDs. As such, the public health risk with BRV will also be similar to other schedule V AEDs. The HHS noted that if BRV were approved for medical use, it would be abused for its rewarding properties. In healthy volunteers administered 600 mg or higher of BRV, cognitive and motor impairment and sedation were observed. It is unknown how BRV would interact in combination with other CNS depressants and if the sedative effects would be additive or even a lethal combination. In an interaction study with BRV and intravenous ethanol in healthy individuals, it was determined that BRV enhanced the effects of ethanol.

7. *Its Psychic or Physiological Dependence Liability:* BRV has limited psychological dependence and does not appear to have physical dependence. When rats were administered BRV for 30 days, no signs of physical dependence were noted in comparison to the schedule IV comparator, chlordiazepoxide. Similarly, in human clinical studies with healthy volunteers, there were no reports or adverse events that noted physical dependence or a withdrawal syndrome associated with BRV use. The low potential for physical dependence observed with BRV is consistent with other schedule V AEDs. There is limited evidence for psychological dependence with BRV. Clinical studies have reported individuals experiencing increasing euphoria with increasing doses of BRV. Tolerance does not appear to develop with respect to BRV treatment on epileptic seizure reduction.

8. *Whether the Substance is an Immediate Precursor of a Substance Already Controlled under the CSA:* BRV is not an immediate precursor of any controlled substance.

Conclusion: After considering the scientific and medical evaluation conducted by the HHS, the HHS' recommendation, and its own eight-factor analysis, the DEA has determined that these facts and all relevant data constitute substantial evidence of a potential for abuse of BRV. As such, the DEA hereby schedules BRV as a controlled substance under the CSA.

Determination of Appropriate Schedule

The CSA outlines the findings required to place a drug or other substance in any particular schedule (I, II, III, IV, or V). 21 U.S.C. 812(b). After consideration of the analysis and recommendation of the Assistant Secretary for Health of the HHS and review of all available data, the Acting Administrator of the DEA, pursuant to 21 U.S.C. 812(b)(5), finds that:

1. BRV has a low potential for abuse relative to the drugs or other substances in schedule IV. The overall abuse potential of BRV is comparable to schedule V controlled substances such as ezogabalin, pregabalin, and lacosamide;
2. With FDA's approval of the new drug applications, BRV has a currently accepted medical use in the United States as adjunctive treatment of partial onset seizures in epileptic individuals ages 16 and older; and
3. Human and animal studies demonstrate that BRV has limited psychological dependence and does not appear to have physical dependence. There was no evidence of physical dependence associated with BRV in human and animal studies since there have been no reports of withdrawal syndromes or other physical dependence effects. Based on these data, abuse of BRV may lead to limited psychological dependence similar to schedule V AEDs but less than that of drugs in schedule IV.

Based on these findings, the Acting Administrator of the DEA concludes that brivaracetam ((2S)-2-[(4R)-2-oxo-4-propylpyrrolidin-1-yl] butanamide) (also referred to as BRV; UCB–34714; Briviact), including its salts, warrants control in schedule V of the CSA. 21 U.S.C. 812(b)(5).

Requirements for Handling Brivaracetam

BRV is subject to the CSA's schedule V regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, reverse distribution, dispensing, importing, exporting, research, and conduct of instructional activities and chemical analysis with, and possession involving schedule V substances, including the following:

1. *Registration.* Any person who handles (manufactures, distributes, reverse distributes, dispenses, imports, exports, engages in research, or conducts instructional activities or chemical analysis with, or possesses) BRV, or who desires to handle BRV, must be registered with the DEA to conduct such activities pursuant to 21 U.S.C. 822, 823, 957, and 958 and in accordance with 21 CFR parts 1301 and 1312. Any person who currently handles BRV, and is not registered with the DEA, must submit an application for registration and may not continue to handle BRV, unless the DEA has approved that application for registration, pursuant to 21 U.S.C. 822, 823, 957, and 958, and in accordance with 21 CFR parts 1301 and 1312.
2. *Disposal of stocks.* Any person who does not desire or is not able to obtain a schedule V registration must surrender all quantities of currently held BRV, or may transfer all quantities of currently held BRV to a person registered with the DEA in accordance with 21 CFR part 1317, in additional to all other applicable federal, state, local, and tribal laws.
3. *Security.* BRV is subject to schedule III–V security requirements and must be handled and stored pursuant to 21 U.S.C. 821, 823, and 871(b), and in accordance with 21 CFR 1301.71–1301.93.
4. *Labeling and Packaging.* All labels, labeling, and packaging for commercial containers of BRV must comply with 21 U.S.C. 825 and 958(e), and be in accordance with 21 CFR part 1302.
5. *Inventory.* Every DEA registrant who possesses any quantity of BRV must take an inventory of BRV on hand, pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

Any person who becomes registered with the DEA must take an initial inventory of all stocks of controlled substances (including BRV) on hand on the date the registrant first engages in the handling of controlled substances, pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

After the initial inventory, every DEA registrant must take a new inventory of all stocks of controlled substances (including BRV) on hand every two years, pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

6. *Records and Reports.* Every DEA registrant must maintain records and submit reports for BRV, or products containing BRV, pursuant to 21 U.S.C. 827 and 958(e), and in accordance with 21 CFR parts 1304, 1312, and 1317.

7. *Prescriptions.* All prescriptions for BRV or products containing BRV must comply with 21 U.S.C. 829, and be issued in accordance with 21 CFR parts 1306 and 1311, subpart C.

8. *Importation and Exportation.* All importation and exportation of BRV must be in compliance with 21 U.S.C. 952, 953, 957, and 958, and in accordance with 21 CFR part 1312.

9. *Liability.* Any activity involving BRV not authorized by, or in violation of, the CSA or its implementing regulations, is unlawful, and may subject the person to administrative, civil, and/or criminal sanctions.

Regulatory Analyses

Administrative Procedure Act

Public Law 114–89 was signed into law, amending 21 U.S.C. 811. This amendment provides that in cases where a new drug is (1) approved by the Department of Health and Human Services (HHS) and (2) HHS recommends control in CSA schedule II–V, the DEA shall issue an interim final rule scheduling the drug within 90 days. Additionally, the law specifies that the rulemaking shall become immediately effective as an interim final rule without requiring the DEA to demonstrate good cause. Therefore, the DEA has determined that the notice and comment requirements of section 553 of the APA, 5 U.S.C. 553, do not apply to this scheduling action.

Executive Orders 12866, Regulatory Planning and Review, and 13563, Improving Regulation and Regulatory Review

In accordance with Public Law 114–89, this scheduling action is subject to formal rulemaking procedures performed "on the record after opportunity for a hearing," which are conducted pursuant to the provisions of 5 U.S.C. 556 and 557. The CSA sets forth the procedures and criteria for scheduling a drug or other substance. Such actions are exempt from review by the Office of Management and Budget (OMB) pursuant to section 3(d)(1) of Executive Order 12866 and the principles reaffirmed in Executive Order 13563.

Executive Order 12988, Civil Justice Reform

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

Executive Order 13132, Federalism

This rulemaking does not have federalism implications warranting the application of Executive Order 13132. The rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This rule does not have tribal implications warranting the application of Executive Order 13175. It does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 603(a), "[w]henever an agency is required by [5 U.S.C. 553], or any other law, to publish general notice of proposed rulemaking for any proposed rule, or publishes a notice of proposed rulemaking for an interpretive rule involving the internal revenue laws of the United States, the agency shall prepare and make available for public comment an initial regulatory flexibility analysis." As noted in the above discussion regarding applicability of the Administrative Procedure Act, the DEA has determined that the notice and comment requirements of section 553 of the APA, 5 U.S.C. 553, do not apply to this scheduling action. Consequently, the RFA does not apply to this interim final rule.

Unfunded Mandates Reform Act of 1995

In accordance with the Unfunded Mandates Reform Act (UMRA) of 1995, 2 U.S.C. 1501 *et seq.*, the DEA has determined and certifies that this action would not result in any Federal mandate that may result "in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted for inflation) in any one year." Therefore, neither a Small Government Agency Plan nor any other action is required under UMRA of 1995.

Paperwork Reduction Act of 1995

This action does not impose a new collection of information requirement under the Paperwork Reduction Act of 1995. 44 U.S.C. 3501–3521. This action would not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Congressional Review Act

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act (CRA)). This rule will not result in: An annual effect on the economy of $100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based companies to compete with foreign based companies in domestic and export markets. However, pursuant to the CRA, the DEA has submitted a copy of this interim final rule to both Houses of Congress and to the Comptroller General.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, the DEA amends 21 CFR part 1308:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), unless otherwise noted.

■ 2. Amend § 1308.15 by redesignating paragraphs (e)(1) through (e)(3) as paragraphs (e)(2) through (e)(4) and adding new paragraph (e)(1) to read as follows:

§ 1308.15 Schedule V.

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(e) * * *

(1) Brivaracetam ((2S)-2-[(4R)-2-oxo-4-propylpyrrolidin-1-yl] butanamide) (also referred to as BRV; UCB–34714; Briviact) (including its salts)	2710

* * * * *

Dated: May 6, 2016.

Chuck Rosenberg,

Acting Administrator.

[FR Doc. 2016–11245 Filed 5–11–16; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–434F]

Schedules of Controlled Substances: Temporary Placement of Butyryl Fentanyl and Beta-Hydroxythiofentanyl Into Schedule I

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final order.

SUMMARY: The Administrator of the Drug Enforcement Administration is issuing this final order to temporarily schedule the synthetic opioids, *N*-(1-phenethylpiperidin-4-yl)-*N*-phenylbutyramide, also known as *N*-(1-phenethylpiperidin-4-yl)-*N*-phenylbutanamide, (butyryl fentanyl) and *N*-[1-[2-hydroxy-2-(thiophen-2-yl)ethyl]piperidin-4-yl]-*N*-phenylpropionamide, also known as *N*-[1-[2-hydroxy-2-(2-thienyl)ethyl]-4-piperidinyl]-*N*-phenylpropanamide, (beta-hydroxythiofentanyl), and their isomers, esters, ethers, salts and salts of isomers, esters and ethers, into schedule I pursuant to the temporary scheduling provisions of the Controlled Substances Act. This action is based on a finding by the Administrator that the placement of butyryl fentanyl and beta-hydroxythiofentanyl into schedule I of the Controlled Substances Act is necessary to avoid an imminent hazard to the public safety. As a result of this order, the regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances will be imposed on persons who handle (manufacture, distribute, reverse distribute, import, export, engage in research, conduct instructional activities or chemical analysis, or possess), or propose to handle, butyryl fentanyl and beta-hydroxythiofentanyl.

DATES: This final order is effective on May 12, 2016.

FOR FURTHER INFORMATION CONTACT: Barbara J. Boockholdt, Office of Diversion Control, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (202) 598–6812.

SUPPLEMENTARY INFORMATION:

Legal Authority

The Drug Enforcement Administration (DEA) implements and enforces titles II and III of the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended. 21 U.S.C. 801–971. Titles II and III are referred to as the "Controlled Substances Act" and the "Controlled Substances Import and Export Act," respectively, and are collectively referred to as the "Controlled Substances Act" or the "CSA" for the purpose of this action. The DEA publishes the implementing regulations for these statutes in title 21 of the Code of Federal Regulations (CFR), chapter II. The CSA and its implementing regulations are designed to prevent, detect, and eliminate the diversion of controlled substances and listed chemicals into the illicit market while ensuring an adequate supply is available for the legitimate medical, scientific, research, and industrial needs of the United States. Controlled substances have the potential for abuse and dependence and are controlled to protect the public health and safety.

Under the CSA, every controlled substance is classified into one of five schedules based upon its potential for abuse, its currently accepted medical use in treatment in the United States, and the degree of dependence the drug or other substance may cause. 21 U.S.C. 812. The initial schedules of controlled substances established by Congress are found at 21 U.S.C. 812(c), and the current list of all scheduled substances is published at 21 CFR part 1308.

Section 201 of the CSA, 21 U.S.C. 811, provides the Attorney General with the authority to temporarily place a substance into schedule I of the CSA for two years without regard to the requirements of 21 U.S.C. 811(b) if she finds that such action is necessary to avoid an imminent hazard to the public safety. 21 U.S.C. 811(h)(1). In addition, if proceedings to control a substance are initiated under 21 U.S.C. 811(a)(1), the Attorney General may extend the temporary scheduling for up to one year. 21 U.S.C. 811(h)(2).

Where the necessary findings are made, a substance may be temporarily scheduled if it is not listed in any other schedule under section 202 of the CSA, 21 U.S.C. 812, or if there is no exemption or approval in effect for the substance under section 505 of the Federal Food, Drug, and Cosmetic Act (FDCA), 21 U.S.C. 355. 21 U.S.C. 811(h)(1). The Attorney General has delegated her scheduling authority under 21 U.S.C. 811 to the Administrator of the DEA. 28 CFR 0.100.

Background

Section 201(h)(4) of the CSA, 21 U.S.C. 811(h)(4), requires the Administrator to notify the Secretary of the Department of Health and Human Services (HHS) of his intention to temporarily place a substance into schedule I of the CSA.[1] The Administrator transmitted the notice of intent to place butyryl fentanyl and beta-hydroxythiofentanyl into schedule I on a temporary basis to the Assistant Secretary by letter dated December 21, 2015. The Assistant Secretary responded to this notice by letter dated January 13, 2016, and advised that based on review by the Food and Drug Administration (FDA), there are currently no investigational new drug applications or approved new drug applications for butryl fentanyl or beta-hydroxythiofentanyl. The Assistant Secretary also stated that the HHS has no objection to the temporary placement of butryl fentanyl or beta-hydroxythiofentanyl into schedule I of the CSA. The DEA has taken into consideration the Assistant Secretary's comments as required by 21 U.S.C. 811(h)(4). Neither butryl fentanyl nor beta-hydroxythiofentanyl is currently listed in any schedule under the CSA, and no exemptions or approvals are in effect for butryl fentanyl or beta-hydroxythiofentanyl under section 505 of the FDCA, 21 U.S.C. 355. The DEA has found that the control of butryl fentanyl and beta-hydroxythiofentanyl in schedule I on a temporary basis is necessary to avoid an imminent hazard to public safety, and as required by 21 U.S.C. 811(h)(1)(A), a notice of intent to temporarily schedule butryl fentanyl and beta-hydroxythiofentanyl was published in the **Federal Register** on March 23, 2016. 81 FR 15485.

To find that placing a substance temporarily into schedule I of the CSA is necessary to avoid an imminent hazard to the public safety, the

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[1] As discussed in a memorandum of understanding entered into by the Food and Drug Administration (FDA) and the National Institute on Drug Abuse (NIDA), the FDA acts as the lead agency within the HHS in carrying out the Secretary's scheduling responsibilities under the CSA, with the concurrence of NIDA. 50 FR 9518, Mar. 8, 1985. The Secretary of the HHS has delegated to the Assistant Secretary for Health of the HHS the authority to make domestic drug scheduling recommendations. 58 FR 35460, July 1, 1993.

Administrator is required to consider three of the eight factors set forth in section 201(c) of the CSA, 21 U.S.C. 811(c): The substance's history and current pattern of abuse; the scope, duration and significance of abuse; and what, if any, risk there is to the public health. 21 U.S.C. 811(h)(3). Consideration of these factors includes actual abuse, diversion from legitimate channels, and clandestine importation, manufacture, or distribution. 21 U.S.C. 811(h)(3).

A substance meeting the statutory requirements for temporary scheduling may only be placed into schedule I. 21 U.S.C. 811(h)(1). Substances in schedule I are those that have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. 21 U.S.C. 812(b)(1). Available data and information for butryl fentanyl and beta-hydroxythiofentanyl, summarized below, indicate that these synthetic opioids have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. The DEA's three-factor analysis, and the Assistant Secretary's January 13, 2016, letter, are available in their entirety under the tab "Supporting Documents" of the public docket of this action at *www.regulations.gov* under FDMS Docket ID: DEA–2016–0005 (Docket Number DEA–434).

Factor 4. History and Current Pattern of Abuse

Clandestinely produced substances structurally related to the schedule II opioid analgesic fentanyl were trafficked and abused on the West Coast in the late 1970s and 1980s. These clandestinely produced fentanyl-like substances were commonly known as designer drugs, and recently there has been a reemergence in the trafficking and abuse of designer drug substances, including fentanyl-like substances. Alpha-methylfentanyl, the first fentanyl analogue identified in California, was placed into schedule I of the CSA in September 1981. 46 FR 46799. Following the control of alpha-methylfentanyl, the DEA identified several other fentanyl analogues (3-methylthiofentanyl, acetyl-alpha-methylfentanyl, beta-hydroxy-3-methylfentanyl, alpha-methylthiofentanyl, thiofentanyl, beta-hydroxyfentanyl, para-fluorofentanyl, and 3-methylfentanyl) in submissions to forensic laboratories. These substances were temporarily controlled[2] in 1985–1987 under schedule I of the CSA after finding that they posed an imminent hazard to public safety and were subsequently permanently placed in schedule I of the CSA. On July 17, 2015, acetyl fentanyl was temporarily controlled under schedule I of the CSA after a finding by the Administrator that it posed an imminent hazard to public safety. 80 FR 42381.

Prior to October 1, 2014, the System to Retrieve Information from Drug Evidence (STRIDE) collected the results of drug evidence analyzed at DEA laboratories and reflected evidence submitted by the DEA, other federal law enforcement agencies, and some local law enforcement agencies. STRIDE data were queried through September 30, 2014, by date submitted to federal forensic laboratories. Since October 1, 2014, STARLiMS (a web-based, commercial laboratory information management system) has replaced STRIDE as the DEA laboratory drug evidence data system of record. DEA laboratory data submitted after September 30, 2014, are reposited in STARLiMS. Data from STRIDE and STARLiMS were queried on December 21, 2015. The National Forensic Laboratory Information System (NFLIS) is a program of the DEA that collects drug identification results from drug cases analyzed by other federal, state, and local forensic laboratories. NFLIS reports from other federal, state, and local forensic laboratories were queried on December 22, 2015.[3]

The first laboratory submission of butyryl fentanyl was recorded in Kansas in March 2014 according to NFLIS. STRIDE, STARLiMS, and NFLIS registered seven reports containing butyryl fentanyl in 2014 in Illinois, Kansas, Minnesota, and Pennsylvania; 81 reports of butyryl fentanyl were recorded in 2015 in California, Connecticut, Florida, Indiana, North Dakota, New York, Ohio, Oregon, Tennessee, Virginia, and Wisconsin. A total of three reports of beta-hydroxythiofentanyl were recorded by STARLiMS, all of which were reported in 2015 from Florida. As of December 22, 2015, beta-hydroxythiofentanyl had not been reported in NFLIS; however, this substance was identified in June 2015 by a forensic laboratory in Oregon.

Evidence also suggests that the pattern of abuse of fentanyl analogues, including butyryl fentanyl and beta-hydroxythiofentanyl, parallels that of heroin and prescription opioid analgesics. Seizures of butyryl fentanyl have been encountered in tablet and powder form. Butyryl fentanyl was identified on bottle caps and spoons and residue was detected within glassine bags, on digital scales, and on sifters which demonstrates the abuse of this substance as a replacement for heroin or other opioids, either knowingly or unknowingly. Butyryl fentanyl has been encountered as a single substance as well as in combination with other illicit substances, such as acetyl fentanyl, heroin, cocaine, or methamphetamine. Like butyryl fentanyl, beta-hydroxythiofentanyl has been encountered in both tablet and powder form. Both butyryl fentanyl and beta-hydroxythiofentanyl have caused fatal overdoses, in which intravenous routes of administration are documented.

Factor 5. Scope, Duration and Significance of Abuse

The DEA is currently aware of at least 40 confirmed fatalities associated with butyryl fentanyl and 7 confirmed fatalities associated with beta-hydroxythiofentanyl. The information on these deaths occurring in 2015 was collected from toxicology and medical examiner reports and was reported from four states—Florida (7, beta-hydroxythiofentanyl), Maryland (1, butyryl fentanyl), New York (38, butyryl fentanyl), and Oregon (1, butyryl fentanyl). STRIDE, STARLiMS, and NFLIS have a total of 88 drug reports in which butyryl fentanyl was identified in drug exhibits submitted in 2014 and 2015 from California, Connecticut, Florida, Illinois, Indiana, Kansas, Minnesota, North Dakota, New York, Ohio, Oregon, Pennsylvania, Tennessee, Virginia, and Wisconsin. STARLiMS has a total of three drug reports in which beta-hydroxythiofentanyl was identified in drug exhibits submitted in 2015 from Florida. It is likely that the prevalence of butyryl fentanyl and beta-hydroxythiofentanyl in opioid analgesic-related emergency room admissions and deaths is underreported as standard immunoassays cannot differentiate these substances from fentanyl.

The population likely to abuse butyryl fentanyl and beta-hydroxythiofentanyl overlaps with the populations abusing prescription opioid analgesics and heroin. This is evidenced by the routes of administration and drug use history documented in butyryl fentanyl and beta-hydroxythiofentanyl fatal overdose cases. Because abusers of these fentanyl analogues are likely to obtain these substances through illicit sources, the identity, purity, and quantity is uncertain and inconsistent, thus posing significant adverse health risks to abusers of butyryl fentanyl and beta-hydroxythiofentanyl. Individuals who initiate (*i.e.*, use an illicit drug for the first time) butyryl fentanyl or beta-hydroxythiofentanyl abuse are likely to be at risk of developing substance use disorder, overdose, and death similar to that of other opioid analgesics (*e.g.*, fentanyl, morphine, etc.).

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[2] 50 FR 43698, 51 FR 42834, 50 FR 11690, 51 FR 15474, and 51 FR 4722. [The temporary scheduling of para-fluorofentanyl was extended in 1987, at 52 FR 7270.

[3] Data are still being reported for September–November 2015 due to normal lag time for laboratories to report to NFLIS.

Factor 6. What, if Any, Risk There Is to the Public Health

Butyryl fentanyl and beta-hydroxythiofentanyl exhibit pharmacological profiles similar to that of fentanyl and other mu-opioid receptor agonists. Due to limited scientific data, their potency and toxicity are not known; however, the toxic effects of both butyryl fentanyl and beta-hydroxythiofentanyl in humans are demonstrated by overdose fatalities involving these substances. Abusers of these fentanyl analogues may not know the origin, identity, or purity of these substances, thus posing significant adverse health risks when compared to abuse of pharmaceutical preparations of opioid analgesics, such as morphine and oxycodone.

Based on the documented case reports of overdose fatalities, the abuse of butyryl fentanyl and beta-hydroxythiofentanyl leads to the same qualitative public health risks as heroin, fentanyl and other opioid analgesic substances. The public health risks attendant to the abuse of heroin and opioid analgesics are well established and have resulted in large numbers of drug treatment admissions, emergency department visits, and fatal overdoses.

Butyryl fentanyl and beta-hydroxythiofentanyl have been associated with numerous fatalities. At least 40 confirmed overdose deaths involving butyryl fentanyl abuse have been reported in Maryland (1), New York (38), and Oregon (1) in 2015. At least seven confirmed overdose fatalities involving beta-hydroxythiofentanyl have been reported in Florida in 2015. This indicates that both butyryl fentanyl and beta-hydroxythiofentanyl pose an imminent hazard to the public safety.

Finding of Necessity of Schedule I Placement To Avoid Imminent Hazard to Public Safety

In accordance with 21 U.S.C. 811(h)(3), based on the data and information summarized above, the continued uncontrolled manufacture, distribution, importation, exportation, and abuse of butyryl fentanyl and beta-hydroxythiofentanyl pose an imminent hazard to the public safety. The DEA is not aware of any currently accepted medical uses for these substances in the United States. A substance meeting the statutory requirements for temporary scheduling, 21 U.S.C. 811(h)(1), may only be placed into schedule I. Substances in schedule I are those that have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. Available data and information for butyryl fentanyl and beta-hydroxythiofentanyl indicate that these substances have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. As required by section 201(h)(4) of the CSA, 21 U.S.C. 811(h)(4), the Administrator, through a letter dated December 21, 2015, notified the Assistant Secretary of the DEA's intention to temporarily place these substances into schedule I.

Conclusion

In accordance with the provisions of section 201(h) of the CSA, 21 U.S.C. 811(h), the Administrator considered available data and information, herein sets forth the grounds for his determination that it is necessary to temporarily schedule butyryl fentanyl and beta-hydroxythiofentanyl into schedule I of the CSA, and finds that placement of these synthetic opioids into schedule I of the CSA is necessary to avoid an imminent hazard to the public safety. Because the Administrator hereby finds it necessary to temporarily place these synthetic opioids into schedule I to avoid an imminent hazard to the public safety, this final order temporarily scheduling butyryl fentanyl and beta-hydroxythiofentanyl will be effective on the date of publication in the **Federal Register**, and will be in effect for a period of two years, with a possible extension of one additional year, pending completion of the regular (permanent) scheduling process. 21 U.S.C. 811(h)(1) and (2).

The CSA sets forth specific criteria for scheduling a drug or other substance. Permanent scheduling actions in accordance with 21 U.S.C. 811(a) are subject to formal rulemaking procedures done "on the record after opportunity for a hearing" conducted pursuant to the provisions of 5 U.S.C. 556 and 557. 21 U.S.C. 811. The permanent scheduling process of formal rulemaking affords interested parties with appropriate process and the government with any additional relevant information needed to make a determination. Final decisions that conclude the permanent scheduling process of formal rulemaking are subject to judicial review. 21 U.S.C. 877. Temporary scheduling orders are not subject to judicial review. 21 U.S.C. 811(h)(6).

Requirements for Handling

Upon the effective date of this final order, butyryl fentanyl and beta-hydroxythiofentanyl will become subject to the regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, reverse distribution, importation, exportation, engagement in research, and conduct of instructional activities or chemical analysis with, and possession of schedule I controlled substances including the following:

1. *Registration.* Any person who handles (manufactures, distributes, reverse distributes, imports, exports, engages in research, or conducts instructional activities or chemical analysis with, or possesses), or who desires to handle, butyryl fentanyl and beta-hydroxythiofentanyl must be registered with the DEA to conduct such activities pursuant to 21 U.S.C. 822, 823, 957, and 958 and in accordance with 21 CFR parts 1301 and 1312, as of May 12, 2016. Any person who currently handles butyryl fentanyl and beta-hydroxythiofentanyl, and is not registered with the DEA, must submit an application for registration and may not continue to handle butyryl fentanyl or beta-hydroxythiofentanyl as of May 12, 2016, unless the DEA has approved that application for registration pursuant to 21 U.S.C. 822, 823, 957, 958, and in accordance with 21 CFR parts 1301 and 1312. Retail sales of schedule I controlled substances to the general public are not allowed under the CSA. Possession of any quantity of this substance in a manner not authorized by the CSA on or after May 12, 2016 is unlawful and those in possession of any quantity of this substance may be subject to prosecution pursuant to the CSA.

2. *Disposal of stocks.* Any person who does not desire or is not able to obtain a schedule I registration to handle butyryl fentanyl and beta-hydroxythiofentanyl, must surrender all quantities of currently held butyryl fentanyl and beta-hydroxythiofentanyl.

3. *Security.* Butyryl fentanyl and beta-hydroxythiofentanyl are subject to schedule I security requirements and must be handled and stored pursuant to 21 U.S.C. 821, 823, 871(b), and in accordance with 21 CFR 1301.71–1301.93, as of May 12, 2016.

4. *Labeling and packaging.* All labels, labeling, and packaging for commercial containers of butyryl fentanyl and beta-hydroxythiofentanyl must be in compliance with 21 U.S.C. 825, 958(e), and be in accordance with 21 CFR part 1302. Current DEA registrants shall have 30 calendar days from May 12, 2016, to comply with all labeling and packaging requirements.

5. *Inventory.* Every DEA registrant who possesses any quantity of butyryl fentanyl and beta-hydroxythiofentanyl on the effective date of this order must take an inventory of all stocks of this substance on hand, pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11. Current DEA registrants shall have 30 calendar days from the effective date of this order to be in compliance with all inventory requirements. After the initial inventory, every DEA registrant must take an inventory of all controlled substances (including butyryl fentanyl and beta-hydroxythiofentanyl) on hand on a biennial basis, pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

6. *Records.* All DEA registrants must maintain records with respect to butyryl fentanyl and beta-hydroxythiofentanyl pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR parts 1304, and 1312, 1317 and § 1307.11. Current DEA registrants authorized to handle butyryl fentanyl and beta-hydroxythiofentanyl shall have 30 calendar days from the effective date of this order to be in compliance with all recordkeeping requirements.

7. *Reports.* All DEA registrants who manufacture or distribute butyryl fentanyl and beta-hydroxythiofentanyl must submit reports pursuant to 21 U.S.C. 827 and in accordance with 21 CFR parts 1304, and 1312 as of May 12, 2016.

8. *Order Forms.* All DEA registrants who distribute butyryl fentanyl and beta-hydroxythiofentanyl must comply with order form requirements pursuant to 21 U.S.C. 828 and in accordance with 21 CFR part 1305 as of May 12, 2016.

9. *Importation and Exportation.* All importation and exportation of butyryl fentanyl and beta-hydroxythiofentanyl must be in compliance with 21 U.S.C. 952, 953, 957, 958, and in accordance with 21 CFR part 1312 as of May 12, 2016.

10. *Quota.* Only DEA registered manufacturers may manufacture butyryl fentanyl and beta-hydroxythiofentanyl in accordance with a quota assigned pursuant to 21 U.S.C. 826 and in accordance with 21 CFR part 1303 as of May 12, 2016.

11. *Liability.* Any activity involving butyryl fentanyl and beta-hydroxythiofentanyl not authorized by, or in violation of the CSA, occurring as of May 12, 2016, is unlawful, and may subject the person to administrative, civil, and/or criminal sanctions.

Regulatory Matters

Section 201(h) of the CSA, 21 U.S.C. 811(h), provides for an expedited temporary scheduling action where such action is necessary to avoid an imminent hazard to the public safety. As provided in this subsection, the Attorney General may, by order, schedule a substance in schedule I on a temporary basis. Such an order may not be issued before the expiration of 30 days from (1) the publication of a notice in the **Federal Register** of the intention to issue such order and the grounds upon which such order is to be issued, and (2) the date that notice of the proposed temporary scheduling order is transmitted to the Assistant Secretary. 21 U.S.C. 811(h)(1).

Inasmuch as section 201(h) of the CSA directs that temporary scheduling actions be issued by order and sets forth the procedures by which such orders are to be issued, the DEA believes that the notice and comment requirements of the Administrative Procedure Act (APA) at 5 U.S.C. 553, do not apply to this temporary scheduling action. In the alternative, even assuming that this action might be subject to 5 U.S.C. 553, the Administrator finds that there is good cause to forgo the notice and comment requirements of 5 U.S.C. 553, as any further delays in the process for issuance of temporary scheduling orders would be impracticable and contrary to the public interest in view of the manifest urgency to avoid an imminent hazard to the public safety.

Further, the DEA believes that this temporary scheduling action is not a "rule" as defined by 5 U.S.C. 601(2), and, accordingly, is not subject to the requirements of the Regulatory Flexibility Act. The requirements for the preparation of an initial regulatory flexibility analysis in 5 U.S.C. 603(a) are not applicable where, as here, the DEA is not required by the APA or any other law to publish a general notice of proposed rulemaking.

Additionally, this action is not a significant regulatory action as defined by Executive Order 12866 (Regulatory Planning and Review), section 3(f), and, accordingly, this action has not been reviewed by the Office of Management and Budget (OMB).

This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132 (Federalism) it is determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

As noted above, this action is an order, not a rule. Accordingly, the Congressional Review Act (CRA) is inapplicable, as it applies only to rules. However, if this were a rule, pursuant to the Congressional Review Act, "any rule for which an agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the federal agency promulgating the rule determines." 5 U.S.C. 808(2). It is in the public interest to schedule these substances immediately because they pose a public health risk. This temporary scheduling action is taken pursuant to 21 U.S.C. 811(h), which is specifically designed to enable the DEA to act in an expeditious manner to avoid an imminent hazard to the public safety. 21 U.S.C. 811(h) exempts the temporary scheduling order from standard notice and comment rulemaking procedures to ensure that the process moves swiftly. For the same reasons that underlie 21 U.S.C. 811(h), that is, the DEA's need to move quickly to place these substances into schedule I because they pose an imminent hazard to public safety, it would be contrary to the public interest to delay implementation of the temporary scheduling order. Therefore, this order shall take effect immediately upon its publication. The DEA has submitted a copy of this final order to both Houses of Congress and to the Comptroller General, although such filing is not required under the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act), 5 U.S.C. 801–808 because, as noted above, this action is an order, not a rule.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, the DEA amends 21 CFR part 1308 as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), unless otherwise noted.

■ 2. Amend § 1308.11 by adding paragraphs (h)(26) and (27) to read as follows:

§ 1308.11 Schedule I.

* * * * *

(h) * * *

(26) *N*-(1-phenethylpiperidin-4-yl)-*N*-phenylbutyramide, its isomers, esters, ethers, salts and salts of isomers, esters and ethers (Other names: Butyryl fentanyl)	(9822)
(27) *N*-[1-[2-hydroxy-2-(thiophen-2-yl)ethyl]piperidin-4-yl]-*N*-phenylpropionamide, its isomers, esters, ethers, salts and salts of isomers, esters and ethers (Other names: beta-hydroxythiofentanyl)	(9836)

Dated: May 6, 2016.

Chuck Rosenberg,

Acting Administrator.

[FR Doc. 2016–11219 Filed 5–11–16; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2016–0348]

Drawbridge Operation Regulation; Sacramento River, Sacramento, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Tower Drawbridge across the Sacramento River, mile 59.0, at Sacramento, CA. The deviation is necessary to allow the community to participate in the Capital City Classic Run. This deviation allows the bridge to remain in the closed-to-navigation position during the deviation period.

DATES: This deviation is effective from 7:30 a.m. to 11 a.m. on May 15, 2016.

ADDRESSES: The docket for this deviation, [USCG–2016–0348] is available at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District; telephone 510–437–3516, email *David.H.Sulouff@uscg.mil*.

SUPPLEMENTARY INFORMATION: California Department of Transportation has requested a temporary change to the operation of the Tower Drawbridge, mile 59.0, over Sacramento River, at Sacramento, CA. The vertical lift bridge navigation span provides a vertical clearance of 30 feet above Mean High Water in the closed-to-navigation position. The draw operates as required by 33 CFR 117.189(a). Navigation on the waterway is commercial and recreational.

The drawspan will be secured in the closed-to-navigation position from 7:30 a.m. to 11 a.m. on May 15, 2016, to allow the community to participate in the Capital City Classic Run. This temporary deviation has been coordinated with the waterway users. No objections to the proposed temporary deviation were raised.

Vessels able to pass through the bridge in the closed position may do so at any time. The bridge will be able to open for emergencies and there is no immediate alternate route for vessels to pass. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: May 3, 2016.

D.H. Sulouff,

District Bridge Chief, Eleventh Coast Guard District.

[FR Doc. 2016–11266 Filed 5–11–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2016–0215]

RIN 1625–AA87

Security Zone; Port of New York, Moving Security Zone; Canadian Naval Vessels

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary moving security zone around all Canadian Naval Ships in the New York Harbor, New York, NY. The moving security zone will extend 100 yards on all sides of the ships. The security zone is needed to protect the vessels and their respective crews from potential security threats. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port New York.

DATES: This rule is effective from May 25, 2016 through May 31, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type USCG–2016–0215 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email MST1 R. J. Sampert, Waterways Management Division, U.S. Coast Guard; telephone 718–354–4197, email *ronald.j.sampert@uscg.mil*.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM with respect to this rule because the specifics associated with the entry and transit of the foreign naval vessels in the harbor were not received in time to publish an NPRM. Publishing an NPRM and delaying the effective date of this rule to await public comments would be impracticable and contrary to the public interest since it would inhibit the Coast Guard's ability to fulfill its statutory missions to protect and secure the ports and waterways of the United States.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to public interest because immediate action is needed to respond to the potential security threats associated with having a foreign nation's Naval Vessels in U.S. Waters.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under the authority in 33 U.S.C. 1231. The Captain of the Port of New York (COTP) has determined that potential security risks associated with Canadian Naval Vessels in the Port of New York will be a security concern for vessels within a 100-yard radius of all Canadian Naval Vessels. This rule is needed to protect the vessels and their respective crew in the navigable waters within the security zone while the vessels are within New York Harbor.

IV. Discussion of the Rule

This rule establishes a security zone from May 25, 2016 through May 31, 2016. The security zone will cover all navigable waters within 100 yards of all Canadian Naval Vessels. The duration of the zone is intended to protect the vessels and their respective crews in the navigable waters while in port and while transiting New York Harbor. No vessel or person will be permitted to enter the security zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders (E.O.s) related to rulemaking. Below we summarize our analyses based on a number of these statutes and E.O.s, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-year of the safety zone. Vessel traffic will be able to safely transit around this security zone which will impact a small designated area of the Port of New York South side of Pier 92 for 7 days. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone and the rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a security zone lasting less than seven days that will prohibit entry within 100 yards of the Canadian Naval Vessels. It is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T01–0215 to read as follows:

§ 165.T01–0215 Security Zone; Port of New York, moving Security Zone; Canadian Naval Vessels.

(a) *Location.* The following area is a security zone: All waters within a 100 yard radius of Canadian Naval Vessels, from surface to bottom while transiting from Ambrose Channel to Pier 92 within the Port of New York, while moored at Pier 92 and upon departure transiting back to Ambrose Channel.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port New York (COTP) in the enforcement of the security zone.

(c) *Regulations.* (1) Under the general security zone regulations in subpart D of this part, you may not enter the security zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative via VHF channel 16 or by phone at (718) 354–4353 (Sector New York Command Center). Those in the security zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section will be enforced from May 25, 2016 through May 31, 2016, unless terminated sooner by the COTP.

Dated: April 12, 2016.

M.H. Day,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 2016–11251 Filed 5–11–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2016–0304]

Security Zone; Portland Rose Festival on Willamette River

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the security zone for the Portland Rose Festival on the Willamette River in Portland, OR from 11 a.m. on June 9, 2016, through noon on June 13, 2016. This action is necessary to ensure the security of vessels participating in the 2016 Portland Rose Festival on the Willamette River during the event. Our regulation for the Security Zone Portland Rose Festival on Willamette River identifies the regulated area. During the enforcement period, no person or vessel may enter or remain in the security zone without permission from the Sector Columbia River Captain of the Port.

DATES: The regulations in 33 CFR 165.1312 will be enforced from 11 a.m. on June 9, 2016, through noon on June 13, 2016.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email Mr. Kenneth Lawrenson, Waterways Management Division, MSU Portland, Oregon, U.S. Coast Guard; telephone 503–240–9319, email *MSUPDXWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the security zone for the Portland Rose Festival detailed in 33 CFR 165.1312 from 11 a.m. on June 9, 2016, through noon on June 13, 2016. This action is necessary to ensure the security of vessels participating in the 2016 Portland Rose Festival on the Willamette River during the event. Under the provisions of 33 CFR 165.1312 and 33 CFR 165 subpart D, no person or vessel may enter or remain in the security zone, consisting of all waters of the Willamette River, from surface to bottom, encompassed by the Hawthorne and Steel Bridges, without permission from the Sector Columbia River Captain of the Port. Persons or vessels wishing to enter the security zone may request permission to do so from the on scene Captain of the Port representative via VHF Channel 16 or 13. The Coast Guard may be assisted by other Federal, State, or local enforcement agencies in enforcing this regulation.

This notice of enforcement is issued under authority 33 CFR 165.1312 and 5 U.S.C. 552 (a). In addition to this notice of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via the Local Notice to Mariners and marine information broadcasts.

Dated: April 12, 2016.

D. F. Berliner,

Captain, U.S. Coast Guard, Acting Captain of the Port, Sector Columbia River.

[FR Doc. 2016–11231 Filed 5–11–16; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2013–0534; FRL–9946–29–Region 9]

Withdrawal of Approval and Disapproval of Air Quality Implementation Plans; California; San Joaquin Valley; Contingency Measures for the 1997 $PM_{2.5}$ Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is withdrawing a May 22, 2014 final action approving a state implementation plan (SIP) revision submitted by the State of California under the Clean Air Act (CAA) to address contingency measure requirements for the 1997 annual and 24-hour national ambient air quality standards (NAAQS) for fine particulate matter ($PM_{2.5}$) in the San Joaquin Valley. Simultaneously, EPA is disapproving this SIP submission. These final actions are in response to a decision issued by the U.S. Court of Appeals for the Ninth

Circuit (*Committee for a Better Arvin* v. *EPA*, 786 F.3d 1169 (9th Cir. 2015)) remanding EPA's approval of a related SIP submission and rejecting EPA's rationale for approving plan submissions that rely on California mobile source control measures to meet SIP requirements such as contingency measures, which was a necessary basis for the May 22, 2014 final rule. Finally, EPA is issuing a protective finding for transportation conformity determinations for the disapproval.

DATES: This rule is effective June 13, 2016.

ADDRESSES: The EPA has established docket number EPA–R09–OAR–2013–0534 for this action. Generally, documents in the docket for this action are available electronically at *http://www.regulations.gov* or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California 94015–3901. While all documents in the docket are listed at *http://www.regulations.gov*, some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material, large maps), and some may not be publicly available in either location (*e.g.*, CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Doris Lo, EPA Region IX, (415) 972–3959, *lo.doris@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. Proposed Action

On August 17, 2015, EPA proposed to withdraw its May 22, 2014 final action approving California's July 3, 2013 submission to address contingency measure requirements for the 1997 annual and 24-hour $PM_{2.5}$ NAAQS in the San Joaquin Valley (2013 Contingency Measure Submittal).[1] Simultaneously, EPA proposed to disapprove this SIP submission. These proposed actions were in response to a decision issued by the U.S. Court of Appeals for the Ninth Circuit remanding EPA's approval of a related SIP submission and rejecting EPA's rationale for approving SIP submissions that rely on California mobile source control measures not actually part of the EPA-approved SIP in order to meet SIP requirements (*Committee for a Better Arvin* v. *EPA*, 786 F.3d 1169 (9th Cir. 2015)), which was a necessary basis for the May 22, 2014 final rule. EPA's May 22, 2014, approval of the 2013 Contingency Measure Submittal likewise relied on the same California mobile source control measures.

EPA proposed to determine that the disapproval of the 2013 Contingency Measure Submittal would not start a mandatory sanctions clock or Federal implementation plan (FIP) clock because the specific type of contingency measure at issue in that submittal was no longer a required attainment plan element for the San Joaquin Valley (SJV) area. The California Air Resources Board (CARB) had submitted the 2013 Contingency Measure Submittal to address the contingency measure requirement in CAA section 172(c)(9) as applied to the 2008 $PM_{2.5}$ Plan, which provided for attainment of the 1997 $PM_{2.5}$ NAAQS in the SJV by April 5, 2015, the latest permissible attainment date for this area under subpart 1 of part D, title I of the Act. EPA stated in the proposed rule that, as a consequence of EPA's March 27, 2015 reclassification of the SJV area from "Moderate" to "Serious" nonattainment for the 1997 $PM_{2.5}$ NAAQS, the specific requirement for contingency measures for failure to attain as a Moderate area plan requirement had been eliminated and superseded by different planning obligations under subpart 4 of part D, title I of the Act.[2] Because the State had submitted the 2013 Contingency Measure Submittal to address a contingency measure requirement for failure to attain by a statutory attainment date that no longer applied to the area (April 5, 2015), EPA proposed to find that this SIP submittal no longer addressed an applicable requirement of part D, title I of the Act, and that the disapproval of it therefore would not trigger sanctions. For the same reason, EPA proposed to find that disapproval of the submission would not create any deficiency in a mandatory component of the SIP for the area and, therefore, would not trigger the obligation on EPA to promulgate a FIP under section 110(c) of the Act.[3]

II. Public Comments and EPA Responses

EPA received one comment on the proposed action, submitted by Earthjustice. EPA summarizes and responds to the comment below.

Comment: Earthjustice argues that EPA has no legal basis for proposing to determine that the disapproval of the 2013 Contingency Measure Submittal would not start a mandatory sanctions clock or FIP clock. According to Earthjustice, section 179(a)(2) of the Clean Air Act provides that sanctions "shall apply" if EPA disapproves a submission based on its failure to meet one or more CAA requirements applicable to nonattainment areas, and section 110(c) provides that EPA "shall promulgate a Federal implementation plan at any time within 2 years after [EPA] . . . disapproves a State implementation plan in whole or in part . . . ." Earthjustice asserts that contingency measures under CAA section 172(c)(9) are required elements for all attainment plans for nonattainment areas and must provide for the implementation of specific measures that will be undertaken if the area fails to attain, regardless of the applicable attainment date. Although EPA has some flexibility to establish a schedule for submitting a plan meeting the requirements of section 172(c), according to Earthjustice, that schedule may not be extended beyond three years from the date of the nonattainment designation, a date that has passed for the San Joaquin Valley. Earthjustice argues that the contingency measure requirement was not a "Moderate area" requirement and is not reset or eliminated with reclassification under subpart 4, and that although reclassification as a "Serious area" may affect the tonnage of reductions that must be achieved, it does not eliminate the section 172(c)(9) requirement that the District was required to meet years ago. For all of these reasons, Earthjustice argues that the disapproval of this submittal triggers a sanctions clock under CAA section 179 and a FIP clock under section 110(c).

Response: Upon further consideration of these issues, EPA agrees with the commenter that the disapproval of the 2013 Contingency Measure Submittal triggers a mandatory sanctions clock under CAA section 179 and a FIP clock under section 110(c).

Section 179(a) of the Act provides that, for any SIP revision required under part D of title I of the Act or required in response to a finding of substantial inadequacy as described in section 110(k), if EPA disapproves a submission for a nonattainment area based on the state's failure to meet one or more of the CAA requirements applicable to the area, mandatory sanctions under section 179(b) shall apply. The 2013 Contingency Measure Submittal was a plan revision required under part D of title I of the Act for the purposes of implementing the 1997 $PM_{2.5}$ NAAQS in the SJV $PM_{2.5}$ nonattainment area. As explained in the proposed action, EPA is disapproving the 2013 Contingency Measure Submittal based on the failure to meet the contingency measure requirement in CAA section 172(c)(9) for the area—*i.e.,* because of the reliance on California waiver measures that EPA has not approved into the California SIP. This disapproval triggers a mandatory sanctions clock under section 179.

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[1] 80 FR 49190 (August 17, 2015).

[2] *Id.* at 49192.

[3] *Id.*

Section 110(c) of the Act states that EPA "shall promulgate a Federal implementation plan at any time within 2 years after the Administrator—. . . (B) disapproves a State implementation plan submission in whole or in part," unless the State corrects the deficiency and EPA approves the plan or plan revision before promulgating such FIP. As a consequence of our disapproval of the 2013 Contingency Measure Submittal, the California SIP does not contain any contingency measures to be triggered if the SJV area fails to attain the 1997 $PM_{2.5}$ NAAQS by the Serious area attainment date, which is currently December 31, 2015. Because this disapproval creates a deficiency in the SIP, the disapproval triggers the obligation on EPA to promulgate a FIP under section 110(c), unless the State submits and EPA approves a SIP revision correcting the deficiency within two years of the disapproval.

As explained in the proposed action, contingency measures for failure to attain by the Moderate area attainment date are no longer required in the SJV as the requirement for such measures has been superseded by the requirement for contingency measures as part of a Serious area plan for the 1997 $PM_{2.5}$ NAAQS in this area.[4] Thus, the State is no longer required to adopt contingency measures for failure to attain by April 5, 2015. Because the SJV area is currently classified as a Serious nonattainment area for the 1997 $PM_{2.5}$ NAAQS, however, the State must satisfy the contingency measure requirement in section 172(c)(9) as applied to a Serious area attainment plan to provide for attainment of the 1997 $PM_{2.5}$ NAAQS in the SJV no later than the applicable attainment date, which is currently December 31, 2015.

California submitted a Serious area plan for the 1997 $PM_{2.5}$ NAAQS in the SJV on June 25, 2015, together with requests for extension of the Serious area attainment date under CAA section 188(e) to December 31, 2018 and December 31, 2020 for the 1997 24-hour and annual standards, respectively, and EPA has proposed to grant these requests for extension of the attainment date.[5] If EPA takes final action to extend the Serious area attainment date for the 1997 $PM_{2.5}$ NAAQS in the SJV, the State will be obligated to adopt and submit contingency measures to be implemented if the SJV area fails to make reasonable further progress or to attain the 1997 $PM_{2.5}$ NAAQS by the extended attainment date(s) approved by EPA in that action. We encourage the State and District to consult with EPA during their development of a corrective SIP submission to ensure that it fully satisfies the section 172(c)(9) contingency measure requirement for the 1997 $PM_{2.5}$ NAAQS in the SJV area and thereby corrects the current deficiency in the SIP.

III. Final Action

EPA is withdrawing its May 22, 2014 final action approving the 2013 Contingency Measure Submittal. Simultaneously, under section 110(k)(3) of the Act, EPA is disapproving this SIP submission for failure to satisfy the requirements of CAA section 172(c)(9).

Under section 179(a) of the CAA, a final disapproval of a submittal that addresses a requirement of part D of title I of the CAA or is required in response to a finding of substantial inadequacy as described in CAA section 110(k)(5) (SIP Call), triggers a sanction clock under CAA section 179(b) that runs from the effective date of the final action. The first sanction, the offset sanction in CAA section 179(b)(2), will apply in the SJV $PM_{2.5}$ nonattainment area 18 months after June 13, 2016. The second sanction, highway funding sanctions in CAA section 179(b)(1), will apply in the area six months after the offset sanction is imposed. Neither sanction will be imposed under the CAA if California submits and we approve, prior to the implementation of the sanctions, a SIP submission that corrects the deficiencies identified in this final action.

In addition to the sanctions, CAA section 110(c)(1) provides that EPA must promulgate a federal implementation plan (FIP) addressing the deficiency at any time within two years after June 13, 2016, the effective date of this rule, unless the state makes a SIP submission to correct the deficiency and EPA approves such submission before promulgating a FIP.

Because we previously approved the RFP and attainment demonstrations and the motor vehicle emissions budgets,[6] we are issuing a protective finding under 40 CFR 93.120(a)(3) to the disapproval of the contingency measures. Without a protective finding, the final disapproval would result in a conformity freeze, under which only projects in the first four years of the most recent conforming Regional Transportation Plan and Transportation Improvement Programs can proceed. During a freeze, no new RTPs, TIPs or RTP/TIP amendments can be found to conform.[7] Under this protective finding, the final disapproval of the contingency measures does not result in a transportation conformity freeze in the San Joaquin Valley $PM_{2.5}$ nonattainment area.

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA, because this SIP disapproval does not in-and-of itself create any new information collection burdens, but simply disapproves certain State requirements for inclusion in the SIP.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This SIP disapproval does not in-and-of itself create any new requirements but simply disapproves certain State requirements for inclusion in the SIP.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action disapproves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

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[4] *Id.* at 49192 (August 17, 2015).

[5] 81 FR 6936 at 6938 (February 9, 2016).

[6] 76 FR 69896 (November 9, 2011).

[7] 40 CFR 93.120(a)(2).

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP revision that the EPA is disapproving would not apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because this SIP disapproval does not in-and-of itself create any new regulations, but simply disapproves certain State requirements for inclusion in the SIP.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Population

The EPA lacks the discretionary authority to address environmental justice in this rulemaking.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

L. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 11, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Sulfur oxides.

Dated: April 29, 2016.

Jared Blumenfeld,

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(438)(ii)(C) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(438) * * *

(ii) * * *

(C) Previously approved in paragraphs (c)(438)(ii)(A)(*1*), (c)(438)(ii)(A)(*2*), (c)(438)(ii)(A)(*3*), and (c)(438)(ii)(B)(*1*) of this section and now deleted without replacement: "Quantifying Contingency Reductions for the 2008 $PM_{2.5}$ Plan" (dated June 20, 2013), SJVUAPCD Governing Board Resolution No. 13–6–18 (dated June 20, 2013), *Electronic mail* (dated July 24, 2013) from Samir Sheikh to Kerry Drake, and California Air Resources Board Executive Order 13–30 (dated June 27, 2013).

* * * * *

■ 3. Section 52.237 is amended by adding paragraph (a)(8) to read as follows:

§ 52.237 Part D disapproval.

(a) * * *

(8) The contingency measure portion of the 2008 $PM_{2.5}$ Plan for attainment of the 1997 $PM_{2.5}$ standards in the San Joaquin Valley (June 2013).

[FR Doc. 2016–11125 Filed 5–11–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 150121066–5717–02]

RIN 0648–XE579

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; inseason General category retention limit adjustment.

SUMMARY: NMFS is adjusting the Atlantic bluefin tuna (BFT) General category daily retention limit from the default limit of one large medium or giant BFT to five large medium or giant BFT for June 1 through August 31, 2016. This action is based on consideration of the regulatory determination criteria regarding inseason adjustments, and applies to Atlantic Tunas General category (commercial) permitted vessels and Highly Migratory Species (HMS) Charter/Headboat category permitted vessels when fishing commercially for BFT.

DATES: Effective June 1, 2016, through August 31, 2016.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin or Brad McHale, 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories, per the allocations established in the 2006 Atlantic Consolidated Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) (71 FR 58058, October 2, 2006), as amended by Amendment 7 to the 2006 Consolidated HMS FMP (Amendment 7) (79 FR 71510, December 2, 2014), and in accordance with implementing regulations. NMFS is required under ATCA and the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest the ICCAT-recommended quota.

The currently codified baseline U.S. quota is 1,058.9 mt (not including the 25 mt ICCAT allocated to the United States to account for bycatch of BFT in pelagic longline fisheries in the Northeast Distant Gear Restricted Area). Among other things, Amendment 7 revised the allocations to all quota categories, effective January 1, 2015. See § 635.27(a). The currently codified General category quota is 466.7 mt. Each of the General category time periods (“January,” June through August, September, October through November, and December) is allocated a portion of the annual General category quota. The codified June through August subquota is 233.3 mt.

Adjustment of General Category Daily Retention Limit

Unless changed, the General category daily retention limit starting on June 1 would be the default retention limit of one large medium or giant BFT (measuring 73 inches (185 cm) curved fork length (CFL) or greater) per vessel per day/trip (§ 635.23(a)(2)). This default retention limit would apply to General category permitted vessels and to HMS Charter/Headboat category permitted vessels when fishing commercially for BFT. For the 2015 fishing year, NMFS adjusted the daily retention limit from the default level of one large medium or giant BFT to three large medium or giant BFT for the January subquota period (79 FR 77943, December 29, 2014), which closed March 31, 2015 (the regulations allow the General category fishery under the “January” subquota to continue until the subquota is reached, or March 31, whichever comes first); four large medium or giant BFT for the June through August subquota period (80 FR 27863, May 15, 2015) as well as for September 1 through November 27, 2015 (80 FR 51959, August 27, 2015); and three large medium or giant BFT for November 28 through December 31, 2015 (80 FR 74997, December 1, 2015). NMFS adjusted the daily retention limit for the 2016 January subquota period (which closed March 31) from the default level of one large medium or giant BFT to three large medium or giant BFT in the same action as the 24.3-mt transfer from the December 2016 subquota period to the January 2016 subquota period (80 FR 77264, December 14, 2015).

Under § 635.23(a)(4), NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range of zero to a maximum of five per vessel based on consideration of the relevant criteria provided under § 635.27(a)(8), which are: The usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock; the catches of the particular category quota to date and the likelihood of closure of that segment of the fishery if no adjustment is made; the projected ability of the vessels fishing under the particular category quota to harvest the additional amount of BFT before the end of the fishing year; the estimated amounts by which quotas for other gear categories of the fishery might be exceeded; effects of the adjustment on BFT rebuilding and overfishing; effects of the adjustment on accomplishing the objectives of the FMP; variations in seasonal distribution, abundance, or migration patterns of BFT; effects of catch rates in one area precluding vessels in another area from having a reasonable opportunity to harvest a portion of the category's quota; review of dealer reports, daily landing trends, and the availability of the BFT on the fishing grounds; optimizing fishing opportunity; accounting for dead discards, facilitating quota monitoring, supporting other fishing monitoring programs through quota allocations and/or generation of revenue; and support of research through quota allocations and/or generation of revenue.

NMFS has considered these criteria and their applicability to the General category BFT retention limit for June through August 2016. These considerations include, but are not limited to, the following: Regarding the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock, biological samples collected from BFT landed by General category fishermen and provided by BFT dealers continue to provide NMFS with valuable data for ongoing scientific studies of BFT age and growth, migration, and reproductive status. Additional opportunity to land BFT would support the collection of a broad range of data for these studies and for stock monitoring purposes.

Regarding the effects of the adjustment on BFT rebuilding and overfishing and the effects of the adjustment on accomplishing the objectives of the FMP, as this action would be taken consistent with the previously implemented and analyzed quotas, it is not expected to negatively impact stock health or otherwise affect the stock in ways not previously analyzed, including on rebuilding, overfishing, or the objectives of the FMP. It is also supported by the Environmental Analysis for the 2011 final rule regarding General and Harpoon category management measures, which increased the General category maximum daily retention limit from three to five fish (76 FR 74003, November 30, 2011).

Another principal consideration in setting the retention limit is the objective of providing opportunities to harvest the full General category quota without exceeding it based on the goals of the 2006 Consolidated HMS FMP and Amendment 7, including to achieve optimum yield on a continuing basis and to optimize the ability of all permit categories to harvest their full BFT quota allocations. This retention limit would be consistent with the quotas established and analyzed in the BFT quota final rule (80 FR 52198, August 28, 2015), and with objectives of the 2006 Consolidated HMS FMP and amendments, and is not expected to negatively impact stock health or to affect the stock in ways not already analyzed in those documents. It is also important that NMFS limit landings to BFT subquotas both to adhere to the FMP quota allocations and to ensure that landings are as consistent as possible with the pattern of fishing mortality (*e.g.,* fish caught at each age) that was assumed in the projections of stock rebuilding.

Commercial-size BFT are anticipated to migrate to the fishing grounds off the northeast U.S. coast by early June. Based on General category landings rates during the June through August time period over the last several years, it is highly unlikely that the June through

August subquota will be filled with the default daily retention limit of one BFT per vessel, and it may not be filled at a four-BFT limit if recent patterns of BFT availability and landings rates continue. During the June–August 2014 period, under a four-fish limit, BFT landings were approximately 107 mt (49 percent of the subquota). In the June–August 2015 period, under a four-fish limit, BFT landings were approximately 205 mt (44 percent of the subquota). For the entire 2015 fishing year, 131.7 percent and 95.1 percent of the baseline and adjusted General category quota was filled, respectively. See below for description of 2015 quota transfers to the General category.

Despite elevated General category limits, the vast majority of successful trips (*i.e.,* General or Charter/Headboat trips on which at least one BFT is landed under General category quota) land only one or two BFT. For instance, the landings data for 2015 show that, under the four-fish limit that applied June 1 through November 27, the proportion of trips that landed one, two, three, or four BFT was as follows: 76 percent landed one BFT; 14 percent landed two BFT; 5 percent landed three BFT; and 5 percent landed four BFT. In the last few years, NMFS has received some comment that a high daily retention limit (specifically five fish) is needed to optimize General category fishing opportunities and account for seasonal distributions by enabling vessels to make overnight trips to distant fishing grounds.

NMFS anticipates that some underharvest of the 2015 adjusted U.S. BFT quota will be carried forward to 2016 to the Reserve category, in accordance with the regulations implementing Amendment 7, this summer (*i.e.,* when complete BFT catch information for 2015 is available and finalized). This, in addition to the fact that any unused General category quota will roll forward to the next subperiod within the calendar year, makes it possible that General category quota will remain available through the end of 2016 for December fishery participants, even if NMFS sets higher daily retention limits for the earlier periods. NMFS also may choose to transfer unused quota from the Reserve or other categories, inseason, based on consideration of the determination criteria, as NMFS did for late 2015 (80 FR 68265, November 4, 2015; 80 FR 74997, December 1, 2015). Therefore, NMFS anticipates that General category participants in all areas and time periods will have opportunities to harvest the General category quota.

A limit lower than five fish could result in unused quota being added to the later portion of the General category season (*i.e.,* rolling forward to the subsequent subquota time period). Increasing the daily retention limit from the default may mitigate rolling an excessive amount of unused quota from one subquota time period to the next. Increasing the daily retention limit to five fish will increase the likelihood that the General category BFT landings will approach, but not exceed, the annual quota, as well as increase the opportunity for catching BFT during the June through August subquota period. Increasing opportunity within each subquota period is also important because of the migratory nature and seasonal distribution of BFT. In a particular geographic region, or waters accessible from a particular port, the amount of fishing opportunity for BFT may be constrained by the short amount of time the BFT are present.

Based on these considerations, NMFS has determined that a five-fish General category retention limit is warranted for the June–August 2016 subquota period. It would provide a reasonable opportunity to harvest the full U.S. BFT quota (including the expected increases in available 2016 quota later in the year), without exceeding it, while maintaining an equitable distribution of fishing opportunities; help optimize the ability of the General category to harvest its full quota; allow the collection of a broad range of data for stock monitoring purposes; and be consistent with the objectives of the 2006 Consolidated HMS FMP, as amended. Therefore, NMFS increases the General category retention limit from the default limit (one) to five large medium or giant BFT per vessel per day/trip, effective June 1, 2016, through August 31, 2016.

Regardless of the duration of a fishing trip, no more than a single day's retention limit may be possessed, retained, or landed. For example (and specific to the June through August 2016 limit), whether a vessel fishing under the General category limit takes a two-day trip or makes two trips in one day, the daily limit of five fish may not be exceeded upon landing. This General category retention limit is effective in all areas, except for the Gulf of Mexico, where NMFS prohibits targeting fishing for BFT, and applies to those vessels permitted in the General category, as well as to those HMS Charter/Headboat permitted vessels fishing commercially for BFT.

Monitoring and Reporting

NMFS will continue to monitor the BFT fishery closely. Dealers are required to submit landing reports within 24 hours of a dealer receiving BFT. General, HMS Charter/Headboat, Harpoon, and Angling category vessel owners are required to report the catch of all BFT retained or discarded dead, within 24 hours of the landing(s) or end of each trip, by accessing *hmspermits.noaa.gov.* Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional adjustment or closure is necessary to ensure available quota is not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas. If needed, subsequent adjustments will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (978) 281–9260, or access *hmspermits.noaa.gov,* for updates on quota monitoring and inseason adjustments.

Classification

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

Prior notice is impracticable because the regulations implementing the 2006 Consolidated HMS FMP, as amended, intended that inseason retention limit adjustments would allow the agency to respond quickly to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Based on available BFT quotas, fishery performance in recent years, and the availability of BFT on the fishing grounds, responsive adjustment to the General category BFT daily retention limit from the default level is warranted to allow fishermen to take advantage of the availability of fish and of quota. For such adjustment to be practicable, it must occur in a timeframe that allows fishermen to take advantage of it.

Fisheries under the General category daily retention limit will commence on June 1 and thus prior notice would be contrary to the public interest. Delays in increasing these retention limits would adversely affect those General and Charter/Headboat category vessels that would otherwise have an opportunity to harvest more than the default retention limit of one BFT per day/trip and may result in low catch rates and quota rollovers. Analysis of available data shows that adjustment to the BFT daily retention limit from the default level would result in minimal risks of exceeding the ICCAT-allocated quota.

With quota available and fish available on the grounds, and with no measurable impacts to the stock, it would be contrary to the public interest to require vessels to wait to harvest the fish allowed through this action. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment.

Adjustment of the General category retention limit needs to be effective June 1, 2016, or as soon as possible thereafter, to minimize any unnecessary disruption in fishing patterns, to allow the impacted sectors to benefit from the adjustment, and to not preclude fishing opportunities for fishermen in geographic areas with access to the fishery only during this time period. Foregoing opportunities to harvest the respective quotas may have negative social and economic impacts for U.S. fishermen that depend upon catching the available quota within the time periods designated in the 2006 Consolidated HMS FMP, as amended. Therefore, the AA finds there is also good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under §§ 635.23(a)(4) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: May 9, 2016.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–11230 Filed 5–11–16; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 81, No. 92
Thursday, May 12, 2016

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–6670; Directorate Identifier 2016–NM–006–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2013–19–04, which applies to certain The Boeing Company Model 737–600, –700, –700C, –800, and –900 series airplanes. AD 2013–19–04 currently requires repetitive detailed and high frequency eddy current (HFEC) inspections for cracking of the skin around the eight fasteners common to the ends of the station (STA) 540 bulkhead chords between stringers S–22 and S–23, left and right sides; related investigative actions and corrective actions, if necessary; and provides an optional terminating modification. Since we issued AD 2013–19–04, we have received reports of additional cracks that are larger and initiated sooner than previously predicted. This proposed AD would reduce the inspection threshold and repetitive inspection intervals. We are proposing this AD to detect and correct fatigue cracking in the fuselage skin around the eight fasteners securing the STA 540 bulkhead chords. Such cracking can result in rapid decompression of the cabin.

DATES: We must receive comments on this proposed AD by June 27, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6670.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6670; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Alan Pohl, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6450; fax: 425–917–6590; email: *alan.pohl@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–6670; Directorate Identifier 2016–NM–006–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

On September 9, 2013, we issued AD 2013–19–04, Amendment 39–17586 (78 FR 59801, September 30, 2013) ("AD 2013–19–04"), for certain The Boeing Company Model 737–600, –700, –700C, –800, and –900 series airplanes. AD 2013–19–04 requires repetitive detailed and HFEC inspections for cracking of the skin around the eight fasteners common to the ends of the STA 540 bulkhead chords between stringers S–22 and S–23, left and right sides; related investigative actions and corrective actions, if necessary; and provides an optional terminating modification. AD 2013–19–04 resulted from a report of cracks found in the skin at body STA 540 just below the left side of stringer S–22 on a Model 737–700 series airplane. We issued AD 2013–19–04 to detect and correct fatigue cracking in the fuselage skin around the eight fasteners securing the STA 540 bulkhead chords, which can result in rapid decompression of the cabin.

Actions Since AD 2013–19–04 Was Issued

Since we issued AD 2013–19–04, we have received reports of cracks that initiated sooner and are larger than previously predicted.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Special Attention Service Bulletin 737–53–1294, Revision 2, dated December 9, 2015, which specifies procedures for doing inspections for cracking of the skin around the eight fasteners common to the ends of the STA 540 bulkhead chords between stringers S–22 and S–23, left and right sides, repairing cracks, and installing a chord splice as a preventive modification on crack-free skin. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type designs.

Proposed AD Requirements

Although this proposed AD does not explicitly restate the requirements of AD 2013–19–04, this proposed AD would retain all of the requirements of AD 2013–19–04. Those requirements are referenced in the service information identified previously, which, in turn, is referenced in paragraphs (g) through (k) of this proposed AD. This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under "Differences Between this Proposed AD and the Service Information." For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6670.

The phrase "related investigative actions" is used in this proposed AD. Related investigative actions are follow-on actions that (1) are related to the primary action, and (2) further investigate the nature of any condition found. Related investigative actions in an AD could include, for example, inspections.

The phrase "corrective actions" is used in this proposed AD. Corrective actions correct or address any condition found. Corrective actions in an AD could include, for example, repairs.

Differences Between This Proposed AD and the Service Information

Boeing Special Attention Service Bulletin 737–53–1294, Revision 2, dated December 9, 2015, specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require accomplishment of repair methods, modification deviations, and alteration deviations in one of the following ways:

- In accordance with a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) whom we have authorized to make those findings.

Costs of Compliance

We estimate that this proposed AD affects 903 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection (left and right side skins).	12 work-hours × $85 per hour = $1,020 per inspection cycle.	$0	$1,020 per inspection cycle.	$921,060 per inspection cycle.

We estimate the following costs to do any necessary repairs and inspections that would be required based on the results of the proposed inspection. We have no way of determining the number of aircraft that might need these repairs:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Preventive modification (each side)	7 work-hours × $85 per hour = $595	$894	$1,489.
Skin repair (each side)	39 work-hours × $85 per hour = $3,315	Up to $5,635	Up to $8,950.

According to the manufacturer, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2013–19–04, Amendment 39–17586 (78 FR 59801, September 30, 2013), and adding the following new AD:

The Boeing Company: Docket No. FAA–2016–6670; Directorate Identifier 2016–NM–006–AD.

(a) Comments Due Date

The FAA must receive comments on this AD action by June 27, 2016.

(b) Affected ADs

This AD replaces AD 2013–19–04, Amendment 39–17586 (78 FR 59801, September 30, 2013) (“AD 2013–19–04”).

(c) Applicability

This AD applies to The Boeing Company Model 737–600, –700, –700C, –800, and –900 series airplanes; certificated in any category; as identified in Boeing Special Attention Service Bulletin 737–53–1294, Revision 2, dated December 9, 2015.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by a report of cracks found in the skin at body station (STA) 540 just below the left side of stringer S–22. We are issuing this AD to detect and correct fatigue cracking in the fuselage skin around the eight fasteners securing the STA 540 bulkhead chords, which can result in rapid decompression of the cabin.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Inspection and Corrective Action

Except as required by paragraphs (i)(1) and (i)(2) of this AD, at the applicable time specified in table 1 of paragraph 1.E. “Compliance,” of Boeing Special Attention Service Bulletin 737–53–1294, Revision 2, dated December 9, 2015: Do detailed and high frequency eddy current (HFEC) inspections for cracking of the skin in the area around the eight fasteners securing the STA 540 bulkhead chords between stringers S–22 and S–23; and do all applicable related investigative and corrective actions; in accordance with Parts 1, 2, 3, 4, and 5 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–53–1294, Revision 2, dated December 9, 2015, except as required by paragraphs (i)(3) and (i)(4) of this AD. Do all applicable related investigative and corrective actions before further flight. Repeat the detailed and HFEC inspections thereafter at the intervals specified in table 1 of paragraph 1.E., “Compliance,” of Boeing Special Attention Service Bulletin 737–53–1294, Revision 2, dated December 9, 2015, until the optional preventive modification specified in paragraph (h) of this AD is done.

(h) Optional Preventive Modification

Accomplishing the preventive modification or repair, including an HFEC inspection for cracking of the skin and STA 540 bulkhead chords, and all applicable repairs, in accordance with paragraph 3.B, Part 2 or Part 4 (left side), and Part 3 or Part 5 (right side), of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–53–1294, Revision 2, dated December 9, 2015, except as required by paragraph (i)(2) of this AD, terminates the inspection requirements of paragraph (g) of this AD for the side on which the modification is done.

(i) Exceptions to Service Bulletin Specifications

(1) Where paragraph 1.E., “Compliance,” of Boeing Special Attention Service Bulletin 737–53–1294, Revision 2, dated December 9, 2015, specifies a compliance time “after the Revision 2 date of this service bulletin,” this AD requires compliance within the specified compliance time after the effective date of this AD.

(2) For airplanes on which Boeing Business Jet Lower Cabin Altitude Supplemental Type Certificate (STC) ST01697SE (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/0812969a86af879b8625766400600105/$FILE/ST01697SE.pdf*) (6,500 feet maximum cabin altitude in lieu of 8,000 feet) has been incorporated, the flight-cycle related compliance times for the inspection required by paragraph (g) of this AD are different from those specified in paragraph 1.E., “Compliance,” of Boeing Special Attention Service Bulletin 737–53–1294, Revision 2, dated December 9, 2015. All initial compliance times specified in total flight cycles or flight cycles must be reduced to half of those specified in Boeing Special Attention Service Bulletin 737–53–1294, Revision 2, dated December 9, 2015. All repetitive interval compliance times specified in flight cycles must be reduced to one-quarter of those specified in paragraph 1.E., “Compliance,” of Boeing Special Attention Service Bulletin 737–53–1294, Revision 2, dated December 9, 2015.

(3) If any cracking is found during any inspection required by this AD, and Boeing Special Attention Service Bulletin 737–53–1294, Revision 2, dated December 9, 2015, specifies to contact Boeing for appropriate action: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (l) of this AD.

(4) The access and restoration instructions identified in the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–53–1294, Revision 2, dated December 9, 2015, are not required by this AD. Operators may perform those actions in accordance with approved maintenance procedures.

(j) Part 26 Supplemental Inspections Not Required by This AD

Table 2 of paragraph 1.E., “Compliance,” of Boeing Special Attention Service Bulletin 737–53–1294, Revision 2, dated December 9, 2015, specifies post-modification airworthiness limitation inspections in compliance with 14 CFR 25.571(a)(3) at the modified locations, which support compliance with 14 CFR 121.1109(c)(2) or 129.109(b)(2). As airworthiness limitations, these inspections are required by maintenance and operational rules. It is therefore unnecessary to mandate them in this AD. Deviations from these inspections require FAA approval, but do not require an alternative method of compliance.

(k) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraphs (g) and (h) of this AD, if those actions were performed before the effective date of this AD using Boeing Special Attention Service Bulletin 737–53–1294, dated March 31, 2011, which is not incorporated by reference in this AD; or Boeing Special Attention Service Bulletin 737–53–1294, Revision 1, dated June 14, 2013, which is incorporated by reference in AD 2013–19–04.

(l) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (m) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov*.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) AMOCs approved previously for the optional preventive modification installed in accordance with paragraph (h) of AD 2013–19–04, and AMOCs approved previously for repairs for AD 2013–19–04, are approved as AMOCs for the corresponding provisions of this AD, provided that such modification or repair included installation of the splice plate as specified in Boeing Special Attention Service Bulletin 737–53–1294, except as provided by paragraph (l)(5) of this AD.

(5) The time-limited repair approved as specified in FAA Letter 120S–15–140, dated June 3, 2015, is approved as an AMOC to the corresponding requirements of this AD.

(m) Related Information

(1) For more information about this AD, contact Alan Pohl, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6450; fax: 425–917–6590; email: *alan.pohl@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on May 5, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–11167 Filed 5–11–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–6669; Directorate Identifier 2015–NM–191–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2006–20–11, which applies to certain The Boeing Company Model 757–200, –200CB, and –200PF series airplanes. AD 2006–20–11 currently requires initial and repetitive detailed or high frequency eddy current (HFEC) inspections for cracks around the rivets at the upper fastener row of the skin lap splice of the fuselage, and repairing any crack found. Since we issued AD 2006–20–11, an evaluation done by the design approval holder (DAH) indicated that the fuselage skin lap splice is subject to widespread fatigue damage (WFD). This proposed AD would no longer allow the detailed inspections and would instead require repetitive external HFEC inspections for cracking of the skin lap splices of the fuselage, and repair if necessary. We are proposing this AD to detect and correct fatigue cracking at certain skin lap splice locations of the fuselage, which could result in reduced structural integrity and rapid decompression of the airplane.

DATES: We must receive comments on this proposed AD by June 27, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, CA 90846–0001; telephone: 206–544–5000, extension 2; fax: 206–766–5683; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6669.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6669; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Eric Schrieber, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5348; fax: 562–627–5210; email: *eric.schrieber@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–6669; Directorate Identifier 2015–NM–191–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

On September 22, 2006, we issued AD 2006–20–11, Amendment 39–14781 (71 FR 58485, October 4, 2006) ("AD 2006–20–11"), for certain The Boeing Company Model 757–200, –200CB, and –200PF series airplanes. AD 2006–20–11 requires initial and repetitive detailed or HFEC inspections for cracks around the rivets at the upper fastener row of the skin lap splice of the fuselage, and repairing any crack found. AD 2006–20–11 resulted from reports of cracking in the fuselage skin of the crown skin panel. We issued AD 2006–20–11 to detect and correct premature fatigue cracking at certain skin lap splice locations of the fuselage, and consequent rapid decompression of the airplane.

Structural fatigue damage is progressive. It begins as minute cracks, and those cracks grow under the action of repeated stresses. This can happen because of normal operational conditions and design attributes, or because of isolated situations or incidents such as material defects, poor fabrication quality, or corrosion pits, dings, or scratches. Fatigue damage can occur locally, in small areas or structural design details, or globally. Global fatigue damage is general degradation of large areas of structure with similar structural details and stress levels. Multiple-site damage is global damage that occurs in a large structural element such as a single rivet line of a lap splice joining two large skin panels. Global damage can also occur in multiple elements such as adjacent frames or stringers. Multiple-site-damage and multiple-element-damage cracks are typically too small initially to be reliably detected with normal inspection methods. Without intervention, these cracks will grow, and eventually compromise the structural integrity of the airplane, in a condition known as WFD. As an airplane ages, WFD will likely occur, and will certainly occur if the airplane is operated long enough without any intervention.

The FAA's WFD final rule (75 FR 69746, November 15, 2010) became effective on January 14, 2011. The WFD rule requires certain actions to prevent structural failure due to WFD throughout the operational life of certain existing transport category airplanes and all of these airplanes that will be certificated in the future. For existing and future airplanes subject to the WFD rule, the rule requires that DAHs establish a limit of validity (LOV) of the engineering data that support the structural maintenance program. Operators affected by the WFD rule may not fly an airplane beyond its LOV, unless an extended LOV is approved.

The WFD rule (75 FR 69746, November 15, 2010) does not require identifying and developing maintenance actions if the DAHs can show that such actions are not necessary to prevent WFD before the airplane reaches the LOV. Many LOVs, however, do depend on accomplishment of future maintenance actions. As stated in the WFD rule, any maintenance actions necessary to reach the LOV will be mandated by airworthiness directives through separate rulemaking actions.

In the context of WFD, this action is necessary to enable DAHs to propose LOVs that allow operators the longest operational lives for their airplanes, and still ensure that WFD will not occur. This approach allows for an implementation strategy that provides flexibility to DAHs in determining the timing of service information development (with FAA approval), while providing operators with certainty regarding the LOV applicable to their airplanes.

We are proposing this AD to detect and correct fatigue cracking at certain skin lap splice locations of the fuselage, which could result in reduced structural integrity and rapid decompression of the airplane.

Actions Since AD 2006–20–11 Was Issued

Since issuance of AD 2006–20–11, an evaluation done by the DAH indicated that the fuselage skin lap splice is subject to WFD.

We have determined that the detailed inspection that is allowed as an option in AD 2006–20–11, does not adequately address the identified unsafe condition. Only HFEC inspections are adequate to address the identified unsafe condition.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Special Attention Service Bulletin 757–53–0090, Revision 1, dated November 19, 2015. The service information describes procedures for repetitive external HFEC inspections for cracking of the skin lap splices of the fuselage. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously. For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6669.

Costs of Compliance

We estimate that this proposed AD affects 572 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspections [retained actions from AD 2006–20–11].	Up to 20 work-hours × $85 per hour = up to $1,700 per inspection cycle.	$0	Up to $1,700 per inspection cycle.	Up to $972,400 per inspection cycle.
New proposed inspections	Up to 20 work-hours × $85 per hour = up to $1,700 per inspection cycle.	0	Up to $1,700 per inspection cycle.	Up to $972,400 per inspection cycle.

We have received no definitive data that would enable us to provide a cost estimate for the on-condition repairs specified in this proposed AD.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2006–20–11, Amendment 39–14781 (71 FR 58485, October 4, 2006), and adding the following new AD:

The Boeing Company: Docket No. FAA–2016–6669; Directorate Identifier 2015–NM–191–AD.

(a) Comments Due Date

The FAA must receive comments on this AD action by June 27, 2016.

(b) Affected ADs

This AD replaces AD 2006–20–11, Amendment 39–14781 (71 FR 58485, October 4, 2006) ("AD 2006–20–11"). This AD affects AD 2006–11–11, Amendment 39–14615 (71 FR 30278, May 26, 2006) ("AD 2006–11–11").

(c) Applicability

(c) This AD applies to The Boeing Company Model 757–200, –200CB, and –200PF series airplanes, certificated in any category, as identified in Boeing Special Attention Service Bulletin 757–53–0090, Revision 1, dated November 19, 2015.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by an evaluation done by the design approval holder which indicated that the fuselage skin lap splice is subject to widespread fatigue damage. We are issuing this AD to detect and correct fatigue cracking at certain skin lap splice locations of the fuselage, which could result in reduced structural integrity and rapid decompression of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Retained Initial and Repetitive Inspections With Terminating Action

This paragraph restates the requirements of paragraph (f) of AD 2006–20–11, with terminating action. Do initial and repetitive detailed or high frequency eddy current (HFEC) inspections for cracking around the rivets at the upper fastener row of the skin lap splice of the fuselage by doing all the actions in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–53–0090, dated June 2, 2005, except as provided by paragraphs (h) and (i) of this AD. Do the inspections at the applicable times specified in Paragraph 1.E., "Compliance," of Boeing Special Attention Service Bulletin 757–53–0090, dated June 2, 2005; except where Boeing Special Attention Service Bulletin 757–53–0090, dated June 2, 2005, specifies a compliance time "after the original release date of this service bulletin," this AD requires compliance after November 8, 2006 (the effective date of AD 2006–20–11). Accomplishing an inspection required by paragraph (j) of this AD terminates the inspections required by this paragraph.

(h) Retained Repair With No Changes

This paragraph restates the requirements of paragraph (g) of AD 2006–20–11, with no changes. If any crack is found during any inspection required by paragraph (g) of this AD: Before further flight, repair the crack using a method approved in accordance with the procedures specified in paragraph (m) of this AD.

(i) Retained No Reporting Required With No Changes

This paragraph restates the provision specified in paragraph (h) of AD 2006–20–11, with no changes. Although Boeing Special Attention Service Bulletin 757–53–0090, dated June 2, 2005, recommends that inspection results be reported to the manufacturer, this AD does not include that requirement.

(j) New Repetitive Inspections

At the applicable time specified in table 1 of paragraph 1.E., "Compliance," of Boeing Special Attention Service Bulletin 757–53–0090, Revision 1, dated November 19, 2015, except as provided by paragraph (l)(1) of this AD: Do an external high frequency eddy current (HFEC) inspection for cracking of the skin lap splices of the fuselage, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–53–0090, Revision 1, dated November 19, 2015. Repeat the inspection thereafter at the applicable times specified in table 1 of paragraph 1.E., "Compliance," of Boeing Special Attention Service Bulletin 757–53–0090, Revision 1, dated November 19, 2015. Doing an inspection required by this paragraph terminates the inspections required by paragraph (g) of this AD.

(k) Repair for Cracking Found During Inspections Required by Paragraph (j) of This AD

If any cracking is found during any inspection required by paragraph (j) of this AD, repair before further flight using a method approved in accordance with the procedures specified in paragraph (m) of this AD.

(l) Exceptions to Service Information

(1) Where Boeing Special Attention Service Bulletin 757–53–0090, Revision 1, dated November 19, 2015, specifies a compliance time "after the Revision 1 date of this service bulletin," this AD requires compliance within the specified compliance time after the effective date of this AD.

(2) Although Boeing Special Attention Service Bulletin 757–53–0090, Revision 1, dated November 19, 2015, specifies to contact Boeing for repair instructions, and specifies that action as "RC" (Required for Compliance), paragraph (k) of this AD requires repair before further flight using a method approved in accordance with the procedures specified in paragraph (m) of this AD.

(m) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (n)(1) of this AD. Information may be emailed to: *9-ANM-LAACO-AMOC-Requests@faa.gov*.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Los Angeles ACO, to make those findings. To be approved the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane and the approval must specifically refer to this AD.

(4) AMOCs approved for AD 2006–20–11, are approved as AMOCs for the corresponding provisions of paragraphs (g) and (j) of this AD.

(5) Except as required by paragraph (l)(2) of this AD: For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (m)(5)(i) and (m)(5)(ii) apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(6) The inspections specified in paragraph (g) of this AD are approved as an AMOC to paragraph (h) of AD 2006–11–11 for the inspections of Significant Structural Items (SSI) 53–30–07 and 53–60–07 (fuselage lap splices, left and right upper fastener row) listed in the May 2003 or June 2005 revision of the Boeing 757 Maintenance Planning Data (MPD) Document D622N001–9. This AMOC applies only to the common areas identified in paragraphs (m)(6)(i) and (m)(6)(ii) of this AD. All provisions of AD 2006–11–11 that are not specifically referenced in the above statements remain fully applicable and must be complied with as specified in AD 2006–11–11. Operators may revise their FAA-approved maintenance or inspection program with these alternative inspections for common areas.

(i) Common areas inspected before the effective date of this AD in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–53–0090, dated June 2, 2005.

(ii) Common areas inspected in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–53–0090, Revision 1, dated November 19, 2015.

(n) Related Information

(1) For more information about this AD, contact Eric Schrieber, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5348; fax: 562–627–5210; email: *eric.schrieber@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, CA 90846–0001; telephone: 206–544–5000, extension 2; fax: 206–766–5683; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on May 5, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–11168 Filed 5–11–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–0077; Directorate Identifier 2013–NM–254–AD]

RIN 2120–AA64

Airworthiness Directives; ATR—GIE Avions de Transport Régional Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: We are revising an earlier proposed airworthiness directive (AD) for certain ATR—GIE Avions de Transport Régional Model ATR42–500 and Model ATR72–212A airplanes. The NPRM proposed to require measuring the gap between the Type III Emergency Exit doors and certain overhead stowage compartment fittings; removing certain fittings from the overhead stowage compartments and measuring the gap between the Type III Emergency Exit doors and the overhead stowage compartment hooks, if necessary; and re-installing or repairing, as applicable, the Type III Emergency Exit doors. The NPRM was prompted by a report indicating that interference occurred between a Type III Emergency Exit door and the surrounding passenger cabin furnishing during a production check. This action revises the NPRM by adding new proposed requirements for modifying the overhead stowage compartments. We are proposing this supplemental NPRM (SNPRM) to prevent interference between a Type III Emergency Exit door and the overhead stowage compartment fitting installed on the rail; which could result in obstructed opening of a Type III Emergency Exit door during an emergency evacuation. Since these actions impose an additional burden over those proposed in the NPRM, we are reopening the comment period to allow the public the chance to comment on these proposed changes.

DATES: We must receive comments on this SNPRM by June 27, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this SNPRM, contact ATR—GIE Avions de Transport Régional, 1, Allée Pierre Nadot, 31712 Blagnac Cedex, France; telephone +33 (0) 5 62 21 62 21; fax +33 (0) 5 62 21 67 18; email *continued.airworthiness@atr.fr;* Internet *http://www.aerochain.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–0077; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax: 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2015–0077; Directorate Identifier 2013–NM–254–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://*

www.regulations.gov, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain ATR—GIE Avions de Transport Régional Model ATR42–500 and Model ATR72–212A airplanes. The NPRM published in the **Federal Register** on January 23, 2015 (80 FR 3531) ("the NPRM"). The NPRM was prompted by a report indicating that interference occurred between a Type III Emergency Exit door and the surrounding passenger cabin furnishing during a production check. The NPRM proposed to require measuring the gap between the Type III Emergency Exit doors and certain overhead stowage compartment fittings; removing certain fittings from the overhead stowage compartments and measuring the gap between the Type III Emergency Exit doors and the overhead stowage compartment hooks, if necessary; and re-installing or repairing, as applicable, the Type III Emergency Exit doors.

Actions Since the NPRM Was Issued

Since we issued the NPRM, we have determined that, in order to address the identified unsafe condition, additional requirements are needed for modifying the overhead stowage compartments (including removing the hooks and fittings from the lateral rails) and re-identifying the overhead stowage compartments with new part numbers. The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2015–0018, dated February 5, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition on certain ATR—GIE Avions de Transport Régional Model ATR42–500 and Model ATR72–212A airplanes. The MCAI states:

> Interference between a Type III Emergency Exit door opening and surrounding passenger cabin furnishing was detected during a production check.
>
> Subsequent investigation identified an insufficient gap between the emergency exit door internal skin structure and the overhead stowage compartment fitting, installed on the rail, as a cause of the interference.
>
> This condition, if not detected and corrected, could prevent an unobstructed opening of both Type III Emergency Exit doors in case of emergency evacuation.
>
> Prompted by this finding, EASA issued AD 2013–0280 [*http://ad.easa.europa.eu/ad/2013–0280*] to require a one-time check of the gap between the Type III Emergency Exit door internal skin and a relevant fitting and, depending on findings, the accomplishment of applicable corrective action(s). That [EASA] AD was considered to be a temporary measure.
>
> Since that [EASA] AD was issued, ATR developed a design solution to ensure that no interference with surrounding structure occurs during opening of an emergency exit. ATR Service Bulletins (SB) ATR42–25–0185, SB ATR42–25–0186, SB ATR72–25–1148 and SB ATR72–25–1149 were issued to provide the necessary modification instructions for in-service aeroplanes.
>
> For the reason described above, this [EASA] AD retains the requirements of EASA AD 2013–0280, which is superseded, and requires modification of the overhead bin attachment adjacent to the Type III emergency exit doors [The modification includes removing the hooks and fittings from the lateral rails and re-identifying the overhead stowage compartments].

Required actions include an additional measurement of the gap between the internal skin and overhead stowage compartment hooks of both Type III Emergency Exits, if necessary. Corrective actions include re-installing the Type III Emergency Exit doors and doing a repair. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov by searching for and locating Docket No. FAA–2015–0077.*

Related Service Information Under 1 CFR Part 51

Avions de Transport Régional Service has issued the following service information:

- ATR Service Bulletin ATR42 25–0180, dated August 19, 2013, which describes procedures for, among other things, removing certain fittings from the overhead stowage compartments, measuring the gap between the Type III Emergency Exit doors and the overhead stowage compartment hooks, re-installing the Type III Emergency Exit doors, and repair.
- ATR Service Bulletin ATR72 25–1141, dated August 19, 2013, which describes procedures for, among other things, removing certain fittings from the overhead stowage compartments, measuring the gap between the Type III Emergency Exit doors and the overhead stowage compartment hooks, and re-installing the Type III Emergency Exit doors.
- ATR Service Bulletin ATR42–25–0185, dated November 21, 2014, which describes procedures for modifying the overhead stowage compartments.
- ATR Service Bulletin ATR42–25–0186, dated November 21, 2014, which describes procedures for modifying the overhead stowage compartments.
- ATR Service Bulletin ATR72–25–1148, dated November 21, 2014, which describes procedures for modifying the overhead stowage compartments.
- ATR Service Bulletin ATR72–25–1149, dated November 21, 2014, which describes procedures for modifying the overhead stowage compartments.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Comments

We gave the public the opportunity to participate in developing this proposed AD. We received no comments on the NPRM or on the determination of the cost to the public.

FAA's Determination and Requirements of This SNPRM

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of these same type designs.

Certain changes described above expand the scope of the NPRM. As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this SNPRM.

Costs of Compliance

We estimate that this SNPRM affects 4 airplanes of U.S. registry.

We also estimate that it would take about 4 work-hours per product to comply with the new basic requirements of this SNPRM. The average labor rate is $85 per work-hour. Required parts would cost about $0 per product. Based on these figures, we estimate the cost of this SNPRM on U.S. operators to be $1,360, or $340, or per product.

In addition, we estimate that any necessary follow-on actions would take about 1 work-hour for a cost of $85 per product. We have no way of determining the number of aircraft that might need these actions.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Airbus: Docket No. FAA–2015–0077; Directorate Identifier 2013–NM–254–AD.

(a) Comments Due Date

We must receive comments by June 27, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the airplanes, certificated in any category, identified in paragraphs (c)(1) and (c)(2) of this AD.

(1) ATR—GIE Avions de Transport Régional Model ATR42–500 airplanes, all manufacturer serial numbers (MSNs) on which ATR Modification 6518 has been embodied in production, except those airplanes on which ATR Modification 7294 has been embodied in production.

(2) ATR—GIE Avions de Transport Régional Model ATR72–212A airplanes on which ATR Modification 6517 has been embodied in production, except those airplanes on which ATR Modification 7294 has been embodied in production.

(d) Subject

Air Transport Association (ATA) of America Code 25, Equipment/furnishings.

(e) Reason

This AD was prompted by a report indicating that interference occurred between a Type III Emergency Exit door and the surrounding passenger cabin furnishing during a production check. We are issuing this AD to prevent interference between a Type III Emergency Exit door and the overhead stowage compartment fitting installed on the rail; which could result in obstructed opening of a Type III Emergency Exit door during an emergency evacuation.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Measurement of Gap Between Type III Emergency Exit Doors and Certain Overhead Stowage Compartment Fittings

For all airplanes, except those airplanes on which ATR Modification 7152 has been embodied in production and except airplanes having MSN 1002, 1005, 1089, 1094, 1095, 1097, 1098, 1099, 1100, 1101, or 1102: Within 2 months after the effective date of this AD, measure the gap between each Type III Emergency Exit door, left hand (LH) and right hand (RH), and the overhead stowage compartment fitting installed on the rail, by unlocking and slightly rotating the LH and RH Type III Emergency Exit doors with the doors remaining on the lower fittings. Use a shim gauge 6 millimeters (mm) (0.236 inch) thick, to measure the gap between the internal skin of the doors and the relevant fittings, part number (P/N) S2522924620000 (LH fitting) and P/N S2522924620100 (RH fitting).

Note 1 to paragraph (g) of this AD: Illustrations may be found in the applicable ATR Illustrated Parts Catalog (IPC) 25–23–02, figure 87, item 90/100.

Note 2 to paragraph (g) of this AD: It might be necessary to pull on the door blanket to correctly see the door internal skin.

(h) Re-Installation of Type III Emergency Exit Doors

During the measurement required by paragraph (g) of this AD, if it is determined that there is a gap equal to or greater than 6 mm (0.236 inch): Before further flight, re-install the LH and RH Type III Emergency Exit Doors, in accordance with paragraph 3.C.(1)(d) of the Accomplishment Instructions of ATR Service Bulletin ATR42–25–0180, dated August 19, 2013; or ATR Service Bulletin ATR72–25–1141, dated August 19, 2013; as applicable.

(i) Removal of Fitting and Measurement of Gap Between Door Internal Skin and Overhead Stowage Compartment Hooks

During the measurement required by paragraph (g) of this AD, if it is determined that there is a gap less than 6 mm (0.236 inch): Before further flight, remove the fitting P/N S2522924620000 (LH fitting) or P/N S2522924620100 (RH fitting), and measure the gap between the internal skin of the LH and RH Type III Emergency Exit Doors and the overhead stowage compartment hooks, in accordance with the Accomplishment Instructions of ATR Service Bulletin ATR42–25–0180, dated August 19, 2013; or ATR72–25–1141, dated August 19, 2013; as applicable.

(1) If, during the measurement required by paragraph (i) of this AD, it is determined that there is a gap equal to or greater than 6 mm (0.236 inch): Before further flight, re-install the LH and RH Type III Emergency Exit Doors, in accordance with the Accomplishment Instructions of ATR Service Bulletin ATR42–25–0180, dated August 19, 2013; or ATR72–25–1141, dated August 19, 2013; as applicable.

(2) If, during the measurement required by paragraph (i) of this AD, it is determined that there is a gap less than 6 mm (0.236 inch): Before further flight, repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or ATR—GIE Avions de Transport Régional's EASA Design Organization Approval (DOA).

(j) Modification of Overhead Stowage Compartments and Re-Identification of Part Number

Within 4 months after the effective date of this AD: Modify the overhead stowage compartments, in accordance with the Accomplishment Instructions of the applicable service information identified in paragraphs (j)(1) through (j)(4) of this AD.

(1) For airplanes identified in ATR Service Bulletin ATR42–25–0185, dated November 21, 2014: ATR Service Bulletin ATR42–25–0185, dated November 21, 2014.

(2) For airplanes identified in ATR Service Bulletin ATR42–25–0186, dated November 21, 2014: ATR Service Bulletin ATR42–25–0186, dated November 21, 2014.

(3) For airplanes identified in ATR Service Bulletin ATR72–25–1148, dated November 21, 2014: ATR Service Bulletin ATR72–25–1148, dated November 21, 2014.

(4) For airplanes identified in ATR Service Bulletin ATR72–25–1149, dated November 21, 2014: ATR Service Bulletin ATR72–25–1149, dated November 21, 2014.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax: 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA; or ATR—GIE Avions de Transport Régional's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(l) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2015–0018, dated February 5, 2015, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–0077.

(2) For service information identified in this AD, contact ATR—GIE Avions de Transport Régional, 1, Allée Pierre Nadot, 31712 Blagnac Cedex, France; telephone +33 (0) 5 62 21 62 21; fax +33 (0) 5 62 21 67 18; email *continued.airworthiness@atr.fr;* Internet *http://www.aerochain.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on May 4, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–11096 Filed 5–11–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 14 and 52

[FAR Case 2016–003; Docket No. 2016–0003, Sequence No. 1]

RIN 9000–AN21

Federal Acquisition Regulation: Administrative Cost To Issue and Administer a Contract

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and the National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to revise the estimated administrative cost to award and administer a contract, for the purpose of evaluating bids for multiple awards.

DATES: Interested parties should submit written comments to the Regulatory Secretariat Division at one of the addresses shown below on or before July 11, 2016 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR case 2016–003 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching for "FAR Case 2016–003". Select the link "Comment Now" that corresponds with "FAR Case 2016–003." Follow the instructions provided on the screen. Please include your name, company name (if any), and "FAR Case 2016–003" on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), ATTN: Ms. Flowers, 1800 F Street NW., 2nd Floor, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR Case 2016–003, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Michael O. Jackson, Procurement Analyst, at 202–208–4949 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite FAR Case 2016–003.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are proposing to revise the provision of the FAR that addresses the Government's cost to award and administer a contract, for the purpose of evaluating bids for multiple awards. The FAR provision at 52.214–22, Evaluation of Bids for Multiple Awards, which was issued in March 1990, reflects that $500 is the administrative cost to the Government for issuing and administering contracts. Based on inflation factors and escalating annual Consumer Price Index (CPI) data available, an upward adjustment of $500 in the provision to $1,000 is a realistic reflection of the actual cost to the Government. We used the CPI calculator at the following web address, *http://data.bls.gov/cgi-bin/cpicalc.pl,* to calculate the upward adjustment. We plugged in the base line year 1990 and $500 and it came up with $907.00, and we rounded up to $1,000. This cost will be reviewed periodically and updated as deemed appropriate.

II. Discussion and Analysis

Amendments to FAR subparts 14.2 and 52.2 are proposed by this rulemaking. A monetary adjustment is proposed for FAR 14.201–8, Price Related Factors, and clause 52.214–22, Evaluation of Bids for Multiple Awards. The adjustment from $500 to $1,000 is to reflect a realistic estimate of the cost to the Government to issue and administer a contract.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This proposed rule is not a major rule under 5 U.S.C. 804.

V. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq*. However, an Initial Regulatory Flexibility Analysis (IRFA) has been performed. The IRFA is summarized as follows:

> FAR 14.201–8 and 52.214–22, Evaluation of Bids for Multiple Awards, reflect that $500 is the administrative cost to the Government for issuing and administering contracts. The rule is necessary to reestablish a more realistic estimate of the cost to award and administer a contract, for the purpose of evaluating bids for multiple awards. The current cost to award and administer a contract has not changed since 1990.
>
> The objective of this rule is to revise FAR 14.201–8 and 52.214–22, Evaluation of Bids for Multiple Awards, to include an inflation adjustment based on Consumer Price Index (CPI), *http://data.bls.gov/cgi-bin/cpicalc.pldata,* since 1990. The adjustment will change the estimated cost to award and administer a contract from $500 to $1,000.
>
> According to the Federal Procurement Data System, in Fiscal Year 2015, the Federal Government made approximately 2,019 definitive contract awards to small businesses using sealed bidding procedures and 103 indefinite-delivery contract awards to small businesses using sealed bidding procedures, 12 of which were multiple awards.
>
> DoD, GSA, and NASA do not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the proposed rule pertains to Government administrative expenses only.
>
> There will be no burden on small businesses because this rule change does not place any new requirement on small entities.

The Regulatory Secretariat Division has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule consistent with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2016–003), in correspondence.

VI. Paperwork Reduction Act

This proposed rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 14 and 52

Government procurement.

William Clark

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA are proposing to amend 48 CFR parts 14 and 52, as set forth below:

■ 1. The authority citation for 48 CFR parts 14 and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 14—SEALED BIDDING

■ 2. Amend section 14.201–8 by revising the introductory text and removing from paragraph (c) the term "$500" and adding "$1,000" in its place.

The revision reads as follows.

14.201–8 Price related factors.

The factors set forth in paragraphs (a) through (e) of this section may be applicable in evaluation of bids for award and shall be included in the solicitation when applicable (see 14.201–5(c)):

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Amend section 52.214–22 by revising the date of the provision and removing from the paragraph the term "$500" and adding "$1,000" in its place.

The revision reads as follows:

52.214–22 Evaluation of Bids for Multiple Awards.

* * * * *

Evaluation of Bids for Multiple Awards (Date)

* * * * *

[FR Doc. 2016–11177 Filed 5–11–16; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No. 160413329–6329–01]

RIN 0648–XE571

Endangered and Threatened Wildlife; 90-Day Finding on a Petition To List the Taiwanese Humpback Dolphin as Threatened or Endangered Under the Endangered Species Act

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: 90-day petition finding, request for information.

SUMMARY: We, NMFS, announce a 90-day finding on a petition to list the Taiwanese humpback dolphin (*Sousa chinensis taiwanensis*) range-wide as threatened or endangered under the Endangered Species Act (ESA). We find that the petition and information in our files present substantial scientific or commercial information indicating that the petitioned action may be warranted for the Taiwanese humpback dolphin. We will conduct a status review of the species to determine if the petitioned action is warranted. To ensure that the status review is comprehensive, we are soliciting scientific and commercial information pertaining to the species from any interested party.

DATES: Information and comments on the subject action must be received by July 11, 2016.

ADDRESSES: You may submit comments, information, or data on this document, identified by the code *NOAA–NMFS–2016–0041,* by either of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0041.* Click the "Comment Now" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Chelsey Young, NMFS Office of Protected Resources (F/PR3), 1315 East West Highway, Silver Spring, MD 20910, USA.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Copies of the petition and related materials are available on our Web site at *http://www.fisheries.noaa.gov/pr/species/mammals/dolphins/indo-pacific-humpback-dolphin.html.*

FOR FURTHER INFORMATION CONTACT: Chelsey Young, Office of Protected Resources, 301–427–8403.

SUPPLEMENTARY INFORMATION:

Background

On March 9, 2016, we received a petition from the Animal Welfare Institute, Center for Biological Diversity and WildEarth Guardians to list the Taiwanese humpback dolphin (*S. chinensis taiwanensis*) as threatened or endangered under the ESA throughout its range. This population of humpback dolphin was previously considered for ESA listing as the Eastern Taiwan Strait distinct population segment (DPS) of the Indo-Pacific humpback dolphin (*Sousa chinensis*); however, we determined that the population was not eligible for listing as a DPS in our 12-month finding (79 FR 74954; December 16, 2014) because it did not meet all the necessary criteria under the DPS Policy (61 FR 4722; February 7, 1996). Specifically, we determined that while the Eastern Taiwan Strait population was "discrete," the population did not qualify as "significant." The petition asserts that new scientific and taxonomic information demonstrates that the Taiwanese humpback dolphin is actually a subspecies, and states that NMFS must reconsider the subspecies for ESA listing. Copies of the petition are available upon request (see **ADDRESSES**).

ESA Statutory, Regulatory, and Policy Provisions and Evaluation Framework

Section 4(b)(3)(A) of the ESA of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires, to the maximum extent practicable, that within 90 days of receipt of a petition to list a species as threatened or endangered, the Secretary of Commerce make a finding on whether that petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted, and to promptly publish such finding in the **Federal Register** (16 U.S.C. 1533(b)(3)(A)). When it is found that substantial scientific or commercial information in a petition indicates the petitioned action may be warranted (a "positive 90-day finding"), we are required to promptly commence a review of the status of the species concerned, during which we will conduct a comprehensive review of the best available scientific and commercial information. In such cases, we conclude the review with a finding as to whether, in fact, the petitioned action is warranted within 12 months of receipt of the petition. Because the finding at the 12-month stage is based on a more thorough review of the available information, as compared to the narrow scope of review at the 90-day stage, a "may be warranted" finding does not prejudge the outcome of the status review.

Under the ESA, a listing determination may address a species, which is defined to also include subspecies and, for any vertebrate species, any DPS that interbreeds when mature (16 U.S.C. 1532(16)). A joint NMFS–U.S. Fish and Wildlife Service (USFWS) (jointly, "the Services") policy clarifies the agencies' interpretation of the phrase "distinct population segment" for the purposes of listing, delisting, and reclassifying a species under the ESA (61 FR 4722; February 7, 1996). A species, subspecies, or DPS is "endangered" if it is in danger of extinction throughout all or a significant portion of its range, and "threatened" if it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range (ESA sections 3(6) and 3(20), respectively, 16 U.S.C. 1532(6) and (20)). Pursuant to the ESA and our implementing regulations, we determine whether a species is threatened or endangered based on any of the following five section 4(a)(1) factors: The present or threatened destruction, modification, or curtailment of its habitat or range; overutilization for commercial, recreational, scientific, or educational purposes; disease or predation; the inadequacy of existing regulatory mechanisms; and any other natural or manmade factors affecting the species' continued existence (16 U.S.C. 1533(a)(1), 50 CFR 424.11(c)).

ESA implementing regulations issued jointly by NMFS and USFWS (50 CFR 424.14(b)) define "substantial information" in the context of reviewing a petition to list, delist, or reclassify a species as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. In evaluating whether substantial information is contained in a petition, the Secretary must consider whether the petition: (1) Clearly indicates the administrative measure recommended and gives the scientific and any common name of the species involved; (2) contains detailed narrative justification for the recommended measure, describing, based on available information, past and present numbers and distribution of the species involved and any threats faced by the species; (3) provides information regarding the status of the species over all or a significant portion of its range; and (4) is accompanied by appropriate supporting documentation in the form of bibliographic references, reprints of pertinent publications, copies of reports or letters from authorities, and maps (50 CFR 424.14(b)(2)).

At the 90-day finding stage, we evaluate the petitioners' request based upon the information in the petition including its references and the information readily available in our files. We do not conduct additional research, and we do not solicit information from parties outside the agency to help us in evaluating the petition. We will accept the petitioners' sources and characterizations of the information presented if they appear to be based on accepted scientific principles, unless we have specific information in our files that indicates the petition's information is incorrect, unreliable, obsolete, or otherwise irrelevant to the requested action. Information that is susceptible to more than one interpretation or that is contradicted by other available information will not be dismissed at the 90-day finding stage, so long as it is reliable and a reasonable person would conclude it supports the petitioners' assertions. In other words, conclusive information indicating the species may meet the ESA's requirements for listing is not required to make a positive 90-day finding. We will not conclude that a lack of specific information alone negates a positive 90-day finding if a reasonable person would conclude that the unknown information itself suggests an extinction risk of concern for the species at issue.

To make a 90-day finding on a petition to list a species, we evaluate whether the petition presents substantial scientific or commercial information indicating the subject species may be either threatened or endangered, as defined by the ESA. First, we evaluate whether the information presented in the petition, along with the information readily available in our files, indicates that the petitioned entity constitutes a "species" eligible for listing under the ESA. Next, we evaluate whether the information indicates that the species faces an extinction risk that is cause for concern; this may be indicated in information expressly discussing the species' status and trends, or in information describing impacts and threats to the species. We evaluate any information on specific demographic factors pertinent to evaluating extinction risk for the species (*e.g.*, population abundance and trends, productivity, spatial structure, age structure, sex ratio, diversity, current and historical range, habitat integrity or fragmentation), and the potential contribution of identified demographic risks to extinction risk for the species. We then evaluate the potential links between these demographic risks and the causative impacts and threats identified in section 4(a)(1).

Information presented on impacts or threats should be specific to the species and should reasonably suggest that one or more of these factors may be operative threats that act or have acted on the species to the point that it may warrant protection under the ESA. Broad statements about generalized threats to the species, or identification of factors that could negatively impact a species, do not constitute substantial information indicating that listing may be warranted. We look for information indicating that not only is the particular species exposed to a factor, but that the species may be responding in a negative fashion; then we assess the potential significance of that negative response.

Many petitions identify risk classifications made by nongovernmental organizations, such as the International Union on the Conservation of Nature (IUCN), the American Fisheries Society, or NatureServe, as evidence of extinction risk for a species. Risk classifications by other organizations or made under other Federal or state statutes may be informative, but such classification alone may not provide the rationale for a positive 90-day finding under the ESA. For example, as explained by NatureServe, their assessments of a species' conservation status do "not constitute a recommendation by NatureServe for listing under the U.S. Endangered Species Act" because NatureServe assessments "have different criteria, evidence requirements, purposes and taxonomic coverage than government lists of endangered and threatened species, and therefore these two types of lists should not be expected to coincide" (*http://www.natureserve.org/prodServices/pdf/NatureServeStatusAssessmentsListing-Dec%202008.pdf*). Additionally, species classifications under IUCN and the ESA are not equivalent; data standards, criteria used to evaluate species, and treatment of uncertainty are also not necessarily the same. Thus, when a petition cites such classifications, we will evaluate the source of information that the classification is based upon in light of the standards on extinction risk and impacts or threats discussed above.

Species Description and Taxonomy

The petitioned population of dolphin (*Sousa chinensis taiwanensis*) is thought to be a subspecies of the Indo-Pacific humpback dolphin, *Sousa chinensis*. The Indo-Pacific humpback dolphin is a broadly distributed species within the genus *Sousa*, family Delphinidae, and order Cetacea. It is easy to distinguish from other dolphin species in its range, as it is characterized by a robust body, long distinct beak, short dorsal fin atop a wide dorsal hump, and round-tipped broad flippers and flukes (Jefferson and Karczmarski, 2001). The Taiwanese population also has a short dorsal fin with a wide base. However, the base of the fin measures 5–10 percent of the body length, and slopes gradually into the surface of the body; this differs from individuals in the western portion of the range, which have a larger hump that comprises ca. 30 percent of body width and forms the base of an even smaller dorsal fin.

In general, the Indo-Pacific humpback dolphin is medium-sized, with lengths up to 2.8 m, and weighs approximately 250–280 kg (Ross *et al.*, 1994). They form social groups of about 10 animals, but groups of up to 30 animals have been documented (Jefferson *et al.*, 1993).

The petition identifies the Taiwanese humpback dolphin (*Sousa chinensis taiwanensis*) as eligible for listing under the ESA as a "subspecies" of the Indo-Pacific humpback dolphin (*Sousa chinensis*). The taxonomy of the genus *Sousa* is unresolved and has historically been based on morphology, but genetic analyses have recently been used. Current taxonomic hypotheses identify *Sousa chinensis* as one of two (Jefferson *et al.*, 2001), three (Rice, 1998), or four (Mendez *et al.*, 2013) species within the genus. Each species is associated with a unique geographic range, though the species' defined ranges vary depending on how many species are recognized. Rice (1998) recognizes *Sousa teuzii* in the eastern Atlantic, *Sousa plumbea* in the western Indo-Pacific, and *Sousa chinensis* in the eastern Indo-Pacific. Mendez *et al.* (2013) recently identified an as-yet unnamed potential new species in waters off of northern Australia. Currently, the International Union for Conservation of Nature (IUCN) and International Whaling Commission (IWC) Scientific Committee recognize only two species, *Sousa chinensis* in the Indo-Pacific, and *Sousa teuzii* in the eastern Atlantic. Most recently, Wang *et al.* (2015) revised the taxonomy of *Sousa chinensis* and concluded that the Taiwanese humpback dolphin (*S. chinensis taiwanensis*) is a valid subspecies. Specifically, Wang *et al.* (2015) expanded upon a previous study (Wang *et al.*, 2008) regarding the pigmentation differences between the Taiwanese humpback dolphin and Indo-Pacific humpback dolphin populations inhabiting the Jiulong River and Pearl River estuaries from Hong Kong and Fujian in China. In the 2008 study, Wang *et al.* showed that the pigmentation of the Taiwanese population is significantly different from that of other populations within the taxon (Wang *et al.*, 2008); however, the study did not examine the degree of differentiation for purposes of determining whether subspecies recognition was warranted. Thus, to remedy this oversight, Wang *et al.* (2015) examined the taxonomy of the Indo-Pacific humpback dolphin by comparing spotting densities on the bodies and dorsal fins of these adjacent populations and performing a discriminant analysis. The study determined that the differentiation in pigmentation patterns revealed nearly non-overlapping distributions between the dolphins from Taiwanese waters and those from the Jiulong River and Pearl River estuaries of mainland China (*i.e.*, the nearest known populations). The study stated that the Taiwanese dolphins were clearly diagnosable from those of mainland China under the most commonly accepted 75 percent rule for subspecies delimitation, with 94 percent of one group being separable from 99 percent of the other. Based on this information, as well as additional evidence of geographical isolation and behavioral differences, the authors concluded that the Taiwanese humpback dolphin qualifies as a subspecies, and revised the taxonomy of *Sousa chinensis* to include two subspecies: The Taiwanese humpback dolphin (*S. chinensis taiwanensis*) and the Chinese humpback dolphin (*S. chinensis chinensis*). As a result of this new information, the Taxonomy Committee of the Society for Marine Mammalogy officially revised its list of marine mammal taxonomy to include the Taiwanese humpback dolphin as a subspecies.

While pigmentation of the Taiwanese population is significantly different from other populations within the taxon

(Wang *et al.*, 2008; Wang *et al.*, 2015), whether the pattern is adaptive or has genetic underpinnings is still uncertain. In other cetacean species, differences in pigmentation have been hypothesized to relate to several adaptive responses, allowing individuals to hide from predators, communicate with conspecifics (promoting group cohesion), and disorient and corral prey (Caro *et al.*, 2011). However, the differences in Taiwanese humpback dolphin pigmentation may be a result of a genetic bottleneck from the small size of this population (less than 100 individuals) and it's possible that the Taiwanese humpback dolphin represents a single social and/or family group. Such small populations are more heavily influenced by genetic drift than large populations (Frankham, 1996). However, Wang *et al.* (2015) concluded that the differences between the Taiwanese dolphins and their nearest neighbors are not clinal, but are diagnosably different; the characters examined are not those that may be environmentally induced, but instead are likely a reflection of genetic and developmental differences. Thus, based on the information presented in the petition, which provides evidence that the Taiwanese humpback dolphin is indeed a subspecies (*i.e.*, a listable entity under the ESA), we will proceed with our evaluation of the information in the petition to determine whether *S. chinensis taiwanensis* (referred henceforth as the Taiwanese humpback dolphin) may be warranted for listing throughout all or a significant portion of its range under the ESA.

Range, Distribution and Movement

The Taiwanese humpback dolphin has an extremely small, restricted range, and is distributed throughout only 512 square km of coastal waters off western Taiwan, from estuarine waters of the Houlong and Jhonggang rivers in the north, to waters of Waishanding Jhou to the South (about 170 km linear distance), with the main concentration of the population between the Tongsaio River estuary and Taisi, which encompasses the estuaries of the Dadu and Jhushuei rivers, the two largest river systems in western Taiwan (Wang *et al.*, 2007b). Overall, confirmed present habitat constitutes a narrow region along the coast, which is affected by high human population density and extensive industrial development (Ross *et al.*, 2010). Rarely, individuals have been sighted and strandings have occurred in near-shore habitat to the north and south of its current confirmed habitat; some of these incidents are viewed as evidence that the historical range of the population extended farther than its current range (Dungan *et al.*, 2011).

The Taiwanese humpback dolphin is thought to be geographically isolated from mainland Chinese populations, with water depth being the primary factor dictating their separation. The Taiwan Strait is 140–200 km wide, and consists of large expanses of water 50–70 m deep (the Wuchi and Kuanyin depressions). Despite extensive surveys, Taiwanese humpback dolphins have never been observed in water deeper than 25–30 meters, and thus deep water is thought to be the specific barrier limiting exchange with Chinese mainland populations (Jefferson and Karczmarski, 2001). The species as a whole experiences limited mobility and its restriction to shallow, near-shore estuarine habitats is a significant barrier to movement (Karczmarski *et al.*, 1997; Hung and Jefferson, 2004).

Life History

Little is known about the life history and reproduction of the Indo-Pacific humpback dolphin as a species, let alone the Taiwanese humpback dolphin as a subspecies. In some cases, comparison of the Taiwanese humpback dolphin with other populations may be appropriate, but one needs to be cautious about making these comparisons, as environmental factors such as food availability and habitat status may affect important rates of reproduction and generation time in different populations. A recent analysis of life history patterns for individuals in the Pearl River Estuary (PRE) population of mainland China may offer an appropriate proxy for understanding life history of the Taiwanese humpback dolphin population. Life history traits of the PRE population are similar to those of the South African population, suggesting that some general assumptions of productivity can be gathered, even on the genus-level (Jefferson and Karczmarski, 2001; Jefferson *et al.*, 2012). Maximum longevity for the PRE and South African populations are 38 and 40 years, respectively; thus, it can be assumed that the Taiwanese humpback dolphin experiences a similar life expectancy. In general, it is assumed that the population experiences long calving intervals, between 3 and 5 years (Jefferson *et al.*, 2012), with gestation lasting approximately 10–12 months. It has been suggested that weaning may take up to 2 years, and strong female-calf association may last 3–4 years (Karczmarski *et al.*, 1997; Karczmarski, 1999). Peak calving activity most likely occurs in the warmer months, but exact peak calving time may vary geographically (Jefferson *et al.*, 2012). Age at sexual maturity is late, estimated between 12 and 14 years.

Analysis of Petition and Information Readily Available in NMFS Files

The petition contains information on the Taiwanese humpback dolphin, including its taxonomy, description, geographic distribution, habitat, population status and trends, and factors contributing to the species' decline. According to the petition, all five causal factors in section 4(a)(1) of the ESA are adversely affecting the continued existence of the Taiwanese humpback dolphin: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors.

In the following sections, we summarize and evaluate the information presented in the petition and in our files on the status of *S. chinensis taiwanensis* and the ESA section 4(a)(1) factors that may be affecting this species' risk of global extinction. Based on this evaluation, we determine whether a reasonable person would conclude that an endangered or threatened listing may be warranted for the species.

Status and Population Trends

There have been two formal estimates of abundance for the Taiwanese humpback dolphin. The first is based on surveys conducted between 2002 and 2004 using line transects to track and count animals, which resulted in an estimated population size of 99 individuals (coefficient of variation (CV) = 52 percent, 95 percent confidence interval = 37–266) (Wang *et al.*, 2007a). However, the 2007 international workshop on the conservation and research needs of the Taiwanese humpback dolphin population suggested that the true number of individuals may actually be lower than this estimate (Wang *et al.*, 2007b). A re-analysis of population abundance conducted on data collected between 2007 and 2010 used mark-recapture methods of photo identification, permitting higher-precision measurements. Yearly population estimates from this study ranged from 54 to 74 individuals (CV varied from 4 percent to 13 percent); these estimates were 25 percent to 45 percent lower than those from 2002–2004 (Wang *et al.*, 2012). Jefferson (2000) estimated that mature individuals comprise 60 percent of the population. Based on this proportion, and the largest estimate of population size from the most recent study (74 individuals), the Taiwanese humpback dolphin is most likely comprised of less than 45 mature individuals.

Given the extremely small and isolated nature of the population, even a small number of mortalities could potentially have significant negative population-level effects. For the Taiwanese humpback dolphin, Wang *et al.* (2012) measured survivorship for the population, which was used to determine a mortality rate of 1.5 percent (±0.022) (Wang *et al.*, 2012; Araújo *et al.*, 2014). Carrying capacity for the Taiwanese humpback dolphin has been estimated at 250 individuals (a conservative estimate, higher than the highest point estimate of abundance from Wang (Wang *et al.*, 2012)), as extrapolated from the mean density estimate for the population (Araújo *et al.*, 2014); this estimate suggests that the population abundance has been reduced from historical levels. Additionally, a recent population viability analysis (PVA) suggests that the population is declining due to the synergistic effects of habitat degradation and detrimental fishing interactions (Araújo *et al.*, 2014). Araújo *et al.*, (2014) modeled population trajectory over 100 years using demographic factors combined with different levels of mortality attributed to bycatch, and loss of carrying capacity due to habitat loss/degradation. The model predicted a high probability of ongoing population decline under all scenarios. Ultimately, strong evidence suggests that the population is small, and rates of decline are high, unsustainable, and potentially even underestimated. Further, it is clear that loss of only a single individual within the population per year would substantially reduce population growth rate (Dungan *et al.*, 2011).

Analysis of ESA Section 4(a)(1) Factors

While the petition presents information on each of the ESA section 4(a)(1) factors, we find that the information presented, including information within our files, regarding habitat destruction and overutilization of the species as a result of fisheries interactions is substantial enough to make a determination that a reasonable person would conclude that this species may warrant listing as endangered or threatened based on these two factors alone. As such, we focus our discussion below on the evidence of habitat destruction and overutilization of the species, and present our evaluation of the information regarding these factors and their impact on the extinction risk of the Taiwanese humpback dolphin. The remaining factors discussed in the petition will be thoroughly evaluated in a comprehensive status review of the species.

Destruction, Modification, or Curtailment of the Species' Habitat or Range

The Taiwanese humpback dolphin habitat best compares with that of populations located off the coast of mainland China. Taiwanese humpback dolphins are thought to be restricted to water <30 m deep, and most observed sightings have occurred in estuarine habitat with significant freshwater input (Wang *et al.*, 2007a). The input of freshwater to *S. chinensis taiwanensis* habitat is thought to be important in sustaining estuarine productivity, and thus supporting the availability of prey for the dolphin (Jefferson, 2000). Across the Taiwanese humpback dolphin habitat, bottom substrate consists of soft sloping muddy sediment with elevated nutrient inputs primarily influenced by river deposition (Sheehy, 2010). These nutrient inputs support high primary production, which fuels upper trophic levels contributing to the dolphin's source of food.

The petition states that the Taiwanese humpback dolphin is threatened by habitat destruction and modification and lists multiple causes, including reduction of freshwater outflows to estuaries, seabed reclamation, coastal development, and pollution (including chemical, biological, and noise pollution). Information in our files indicates that much of the preferred habitat of the Taiwanese humpback dolphin has been altered or may become altered. The near-shore marine and estuarine environment in Taiwan is intensively used by humans for fishing, sand extraction, land reclamation, transportation, and recreation, and is a recipient of massive quantities of effluent and runoff (Wang *et al.*, 2007b). However, we do not have sufficient information to evaluate what effects many of the activities discussed in the petition (*e.g.*, reduced freshwater flows, seabed reclamation) are having on the species' status. For example, while several of the rivers in western Taiwan have already been dammed or diverted for agricultural, municipal, or other purposes (Ross *et al.*, 2010), there are no data or information in the petition or our files to indicate how reduced water flows to the estuaries are specifically impacting the Taiwanese humpback dolphins or their prey.

In terms of pollution, we do have some information in our files indicating that these dolphins are exposed to toxic PCBs and are likely negatively affected through ingestion of contaminated prey. The Taiwanese humpback dolphin's exposure to land-based pollution and other threats is relatively high all along the central western coast of Taiwan, because these dolphins are thought to inhabit only a narrow strip of coastal habitat. Further, these dolphins have not been observed in waters deeper than 25–30 m and are typically sighted in waters 15 m deep and within 3 km from shore (Reeves *et al.*, 2008). Given the restricted coastal range of the Taiwanese humpback dolphin and the extensive industrial and agricultural development in the region, food web contamination is likely, with sub-lethal and/or cumulative toxic effects having the potential to adversely impact small populations (Sheehy, 2010). By measuring PCB concentrations of known prey species, Riehl *et al.* (2011) constructed a bioaccumulation model to assess the risk PCBs may be posing to the Taiwanese humpback dolphins. Their results indicated that the Taiwanese humpback dolphins are at risk of immunotoxic effects of PCBs over their lifetime (Riehl *et al.*, 2011). In addition, surveys of 97 Taiwanese humpback dolphins conducted from 2006 to 2010 showed that 73 percent had at least one type of skin lesion and that 49 percent of the surveyed dolphins were diseased (Yang *et al.*, 2011). In another recent study documenting skin conditions of the Taiwanese humpback dolphin, 37 percent of individuals showed evidence of fungal disease, various lesions, ulcers, and nodules. The authors suggest that the high prevalence of compromised skin condition may be linked to high levels of environmental contamination (Yang *et al.*, 2013). These data suggest the dolphins may have weakened immune systems and are consequently more susceptible to disease. Overall, evidence suggests that widespread habitat contamination may be leading to the bioaccumulation of toxins within Taiwanese humpback dolphin individuals; these toxins are known to compromise marine mammal reproduction and immune response, and may be negatively impacting the health and viability of the population.

Overall, while we have insufficient information to evaluate some of the claims in the petition, we do have sufficient information to indicate that pollution is likely having a negative impact on the status of the Taiwanese humpback dolphin. Thus, we conclude that the information in the petition and in our files presents substantial information that the Taiwanese humpback dolphin may warrant listing as threatened or endangered because of threats to its habitat.

Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Information from the petition and in our files suggests that the primary threat to the Taiwanese humpback dolphin is overutilization as a result of commercial fisheries interactions and bycatch-related mortality. Bycatch poses a significant threat to small cetaceans in general, where entanglement in fishing gear results in widespread injury and mortality (Read *et al.*, 2006). The two fishing gear types most hazardous to small cetaceans are gillnets and trammel nets, thousands of which are set in coastal waters off western Taiwan (Dungan *et al.*, 2011). Injury due to entanglement is evident in the Taiwanese humpback dolphin population, identified by characteristic markings on the body, including constrictive line wraps, and direct observation of gear wrapped around the dolphin (Ross *et al.*, 2010; Slooten *et al.*, 2013). In a study exploring the impact of fisheries on the Taiwanese humpback dolphin, 59.2 percent of injuries (lethal and non-lethal) observed were confirmed to have originated from fisheries interactions (Slooten *et al.*, 2013). Even in non-lethal interactions, injuries sustained due to encounters with fishing gear may lead to mortality via immunosuppression, stress, and malnutrition, although these effects are not easily measured (Dungan *et al.*, 2011). In total, one third of 32 photo-identified Taiwanese humpback dolphins had scars thought to have been caused by either collisions with ships or interactions with fishing gear (Wang *et al.*, 2004). Further, while over 30 percent of the Taiwanese humpback dolphin population exhibits evidence of fisheries interactions, including wounds, scars, and entanglement (Wang *et al.*, 2007b; Slooten *et al.*, 2013), this measurement likely underestimates the full extent of the threat, and the prevalence of internal damage from ingestion of fishing gear cannot be determined using current survey methods (Slooten *et al.*, 2013). There are also two unpublished reports of dead, stranded Taiwanese humpback dolphins suspected to have died as a result of a fisheries interaction (Ross *et al.*, 2010). Thousands of vessels fish with gillnets and trammel nets in waters used by humpback dolphins along the west coast of Taiwan. In fact, as of 2009, a total of 6,318 motorized fishing vessels were operating inside the dolphins' habitat, corresponding to 32 vessels per km of coastline (Slooten *et al.*, 2013). A recent progress report by Wang (2013) reports survey data from 2012 that documents individuals observed to have new injuries since last surveyed. Further, in an analysis of stranded individuals in the waters off Hong Kong, where coastal fishing activity is comparable to that off the west coast of Taiwan, the most commonly diagnosed causes of death were entanglement in fishing nets and vessel collision (Jefferson *et al.*, 2006).

In addition to direct mortality as a result of entanglement in fisheries gear, indirect effects of fishing activities may also be negatively impacting the Taiwanese humpback dolphin. Indirect effects of fishing include: Depletion of prey resources, pollution, noise disturbance, altered behavioral responses to prey aggregation in fishing gear, and potential changes to social structure arising from the deaths of individuals caused by fisheries activity. In fact, individual Taiwanese humpback dolphins have shown evidence of disturbance from all of these effects (Slooten *et al.*, 2013), and injuries from fishing gear and boat collisions can compromise the health of individuals and their capacity to adjust to other stressors, or cause death (Dungan *et al.*, 2011).

While the petition provides insufficient evidence to quantify the impact of fishing activities on the population of Taiwanese humpback dolphin, the annual removal of even a few individuals from such a small population due to fisheries interactions can disproportionally reduce population viability and could eventually lead to the extinction of the subspecies (Ross *et al.*, 2010; Dungan *et al.*, 2011; Slooten *et al.*, 2013). In fact, studies show that to ensure viability of the Taiwanese humpback dolphin population, mortality caused by fishing gear must be reduced to less than one individual every 7 years (Slooten *et al.*, 2013). Therefore, based on the information presented in the petition and in our files, we conclude that overutilization may be a threat negatively impacting the Taiwanese humpback dolphin, such that it is cause for concern and warrants further investigation to see if the species warrants listing as threatened or endangered under the ESA.

While the petition identifies numerous other threats to the species, including diseases, the inadequacy of existing regulatory mechanisms, and other natural or manmade factors (*e.g.*, climate change and ocean acidification), we find that the petition and information in our files suggests that impacts from habitat destruction and overutilization, in and of themselves, may be threats impacting the Taiwanese humpback dolphin to such a degree that raises concern that this species may be in danger of extinction throughout all or a significant portion of its range, or likely to become so in the foreseeable future. Thus, when we consider the Taiwanese humpback dolphin across its restricted range, based on the available information in the petition and in our files, its status is likely in decline, it continues to face numerous impacts to its habitat as well as pressure from fisheries interactions, and it has significant biological vulnerabilities and demographic risks (*i.e.*, extremely low productivity; declining abundance; small, isolated population). Therefore, we find that the information in the petition and in our files would lead a reasonable person to conclude that *S. chinensis taiwanensis* may warrant listing as a threatened or endangered species throughout all or a significant portion of its range.

Petition Finding

After reviewing the information contained in the petition, as well as information readily available in our files, and based on the above analysis, we conclude the petition presents substantial scientific information indicating the petitioned action of listing the Taiwanese humpback dolphin (*S. chinensis taiwanensis*) as a threatened or endangered species may be warranted. Therefore, in accordance with section 4(b)(3)(B) of the ESA and NMFS' implementing regulations (50 CFR 424.14(b)(3)), we will commence a status review of the species. During the status review, we will determine whether the Taiwanese humpback dolphin is in danger of extinction (endangered) or likely to become so (threatened) throughout all or a significant portion of its range. We now initiate this review, and thus, *S. chinensis taiwanensis* is considered to be a candidate species (69 FR 19975; April 15, 2004). Within 12 months of the receipt of the petition (March 9, 2017), we will make a finding as to whether listing the Taiwanese humpback dolphin as an endangered or threatened species is warranted as required by section 4(b)(3)(B) of the ESA. If listing is found to be warranted, we will publish a proposed rule and solicit public comments before developing and publishing a final rule.

Information Solicited

To ensure that the status review is based on the best available scientific and commercial data, we are soliciting information on whether the Taiwanese humpback dolphin is endangered or threatened. Specifically, we are soliciting information in the following areas: (1) Historical and current distribution and abundance of the species throughout its range; (2) historical and current population trends; (3) life history and habitat requirements; (4) population structure information, such as genetics analyses of the species; (5) past, current and future threats, including any current or planned activities that may adversely impact the species; (6) ongoing or planned efforts to protect and restore the species and its habitat; and (7) management, regulatory, and enforcement information. We request that all information be accompanied by: (1) Supporting documentation such as maps, bibliographic references, or reprints of pertinent publications; and (2) the submitter's name, address, and any association, institution, or business that the person represents.

References Cited

A complete list of references is available upon request to the Office of Protected Resources (see **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: May 4, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2016–11014 Filed 5–11–16; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 81, No. 92

Thursday, May 12, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Meeting Notice of the National Agricultural Research, Extension, Education, and Economics Advisory Board

AGENCY: Research, Education, and Economics, USDA.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App 2, Section 1408 of the *National Agricultural Research, Extension, and Teaching Policy Act of 1977* (7 U.S.C. 3123), and the *Agricultural Act of 2014,* the United States Department of Agriculture (USDA) announces an open meeting of the National Agricultural Research, Extension, Education, and Economics Advisory Board.

DATES: The National Agricultural Research, Extension, Education, and Economics Advisory Board will meet from 8:30 a.m. until 5:00 p.m. EDT on May 23, 2016, and May 24, 2016.

ADDRESSES: The meeting will be held at the Grand Hyatt Washington, 1000 H Street NW., Washington, DC. Written comments from the public may be sent to: The National Agricultural Research, Extension, Education, and Economics Advisory Board Office, Room 332A, Whitten Building, United States Department of Agriculture, STOP 0321, 1400 Independence Avenue SW., Washington, DC 20250–0321.

FOR FURTHER INFORMATION CONTACT: Michele Esch, Executive Director, or Shirley Morgan-Jordan, Program Support Coordinator, National Agricultural Research, Extension, Education, and Economics Advisory Board; telephone: (202) 720–3684; fax: (202) 720–6199; or email: *michele.esch@usda.gov* or *Shirley.Morgan@ars.usda.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: To provide advice and recommendations on the top priorities and policies for food and agricultural research, education, extension and economics.

Tentative Agenda: The agenda can be found at *https://nareeeab.ree.usda.gov/meetings/general-meetings* will include the following items:

- Discussion and deliberation on the draft report of recommendations on the mandatory annual relevance and adequacy review of the food safety and human nutrition programs and activities of the Research, Education, and Economics mission area and to establish the relevance and adequacy committee for the 2017 review on responding to climate and energy needs.
- Discussion on establishing national priorities and on reviewing the mechanism for technology assessment in USDA.
- Updates on the activities of the Research, Education, and Economics mission area.
- Updates from the permanent subcommittees and working groups of the NAREEE Advisory Board, including the presentation and deliberation of the letter of *Recommendations of the Citrus Disease Subcommittee on the annual consultation with the National Institute of Food and Agriculture.*

Public Participation: This meeting is open to the public and any interested individuals wishing to attend. Opportunity for public comment will be offered each day of the meeting. To attend the meeting and/or make oral statements regarding any items on the agenda, you must contact Shirley Morgan-Jordan at 202–720–3684; email: *shirley.morgan@ars.usda.gov at least 5 business* days prior to the meeting. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Chair will conduct the meeting to facilitate the orderly conduct of business. Written comments by attendees or other interested stakeholders will be welcomed for the public record before and up to two weeks following the Board meeting (by close of business Friday, June 10, 2016). All written statements must be sent to Michele Esch, Designated Federal Officer and Executive Director, at the address listed above or via email *nareee@ars.usda.gov.* All statements will become a part of the official record of the National Agricultural Research, Extension, Education, and Economics Advisory Board and will be kept on file for public review in the Research, Education, and Economics Advisory Board Office.

Done at Washington, DC, this 4th day of May 2016.

Ann M. Bartuska,

Deputy Under Secretary, Research, Education and Economics.

[FR Doc. 2016–11211 Filed 5–11–16; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2016–0028]

Availability of an Environmental Assessment for Field Testing of a Vaccine for Use Against Infectious Laryngotracheitis, Marek's Disease, and Newcastle Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment concerning authorization to ship for the purpose of field testing, and then to field test, an unlicensed Infectious Laryngotracheitis-Marek's Disease-Newcastle Disease Vaccine, Serotype 3, Live Marek's Disease Vector. Based on the environmental assessment, risk analysis and other relevant data, we have reached a preliminary determination that field testing this veterinary vaccine will not have a significant impact on the quality of the human environment. We are making the documents available to the public for review and comment.

DATES: We will consider all comments that we receive on or before June 13, 2016.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2016-0028.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2016–0028, Regulatory Analysis and Development, PPD, APHIS, Station

3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2016-0028* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 7997039 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Donna Malloy, Operational Support Section, Center for Veterinary Biologics, Policy, Evaluation, and Licensing, VS, APHIS, 4700 River Road Unit 148, Riverdale, MD 20737–1231; phone (301) 851–3426, fax (301) 734–4314.

For information regarding the environmental assessment or the risk analysis, or to request a copy of the environmental assessment (as well as the risk analysis with confidential business information removed), contact Dr. Patricia L. Foley, Risk Manager, Center for Veterinary Biologics, Policy, Evaluation, and Licensing, VS, APHIS, 1920 Dayton Avenue, P.O. Box 844, Ames, IA 50010; phone (515) 337–6100, fax (515) 337–6120.

SUPPLEMENTARY INFORMATION: Under the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) is authorized to promulgate regulations designed to ensure that veterinary biological products are pure, safe, potent, and efficacious before a veterinary biological product license may be issued. Veterinary biological products include viruses, serums, toxins, and analogous products of natural or synthetic origin, such as vaccines, antitoxins, or the immunizing components of microorganisms intended for the diagnosis, treatment, or prevention of diseases in domestic animals.

APHIS issues licenses to qualified establishments that produce veterinary biological products and issues permits to importers of such products. APHIS also enforces requirements concerning production, packaging, labeling, and shipping of these products and sets standards for the testing of these products. Regulations concerning veterinary biological products are contained in 9 CFR parts 101 to 124.

A field test is generally necessary to satisfy prelicensing requirements for veterinary biological products. Prior to conducting a field test on an unlicensed product, an applicant must obtain approval from APHIS, as well as obtain APHIS' authorization to ship the product for field testing.

To determine whether to authorize shipment and grant approval for the field testing of the unlicensed product referenced in this notice, APHIS considers the potential effects of this product on the safety of animals, public health, and the environment. Based upon a risk analysis provided by the requester and other relevant data, APHIS has prepared an environmental assessment (EA) concerning the field testing of the following unlicensed veterinary biological product:

Requester: Merck Animal Health, Intervet Inc.

Product: Infectious Laryngotracheitis-Marek's Disease-Newcastle Disease Vaccine, Serotype 3, Live Marek's Disease Vector.

Possible Field Test Locations: Arkansas, South Carolina, and Georgia.

The above-mentioned product is a live Marek's Disease serotype 3 vaccine virus containing a gene from the Newcastle disease virus and two genes from the infectious laryngotracheitis virus. The attenuated vaccine is intended for use in healthy 18-day-old or older embryonated eggs or day-old chickens, as an aid in the prevention of infectious laryngotracheitis, Marek's disease, and Newcastle disease.

The EA has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

We are publishing this notice to inform the public that we will accept written comments regarding the EA from interested or affected persons for a period of 30 days from the date of this notice. Unless substantial issues with adverse environmental impacts are raised in response to this notice, APHIS intends to issue a finding of no significant impact (FONSI) based on the EA and authorize shipment of the above product for the initiation of field tests following the close of the comment period for this notice.

Because the issues raised by field testing and by issuance of a license are identical, APHIS has concluded that the EA that is generated for field testing would also be applicable to the proposed licensing action. Provided that the field test data support the conclusions of the original EA and the issuance of a FONSI, APHIS does not intend to issue a separate EA and FONSI to support the issuance of the product license, and would determine that an environmental impact statement need not be prepared. APHIS intends to issue a veterinary biological product license for this vaccine following completion of the field test provided no adverse impacts on the human environment are identified and provided the product meets all other requirements for licensing.

Authority: 21 U.S.C. 151–159.

Done in Washington, DC, this 6th day of May 2016.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2016–11148 Filed 5–11–16; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2016–0020]

Availability of an Environmental Assessment for Issuance of a Permit for Distribution and Sale for Emergency Use of a Classical Swine Fever Virus Vaccine, Live Pestivirus Vector

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment concerning authorization to import under permit, for distribution and sale for emergency use, a Classical Swine Fever Virus Vaccine, Live Pestivirus Vector. The environmental assessment, which is based on a risk analysis prepared to assess the risks associated with the use of this vaccine, examines the potential effects that this veterinary vaccine could have on the quality of the human environment. Based on the risk analysis and other relevant data, we have reached a preliminary determination that use of this veterinary vaccine will not have a significant impact on the quality of the human environment, and that an environmental impact statement need not be prepared. We intend to authorize shipment of this vaccine under permit for distribution and sale for emergency use in the United States following the close of the comment period for this notice unless new

substantial issues bearing on the effects of this action are brought to our attention and provided the product meets all requirements for approval.

DATES: We will consider all comments that we receive on or before June 13, 2016.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2016-0020.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2016–0020, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2016-0020* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Donna Malloy, Operational Support Section, Center for Veterinary Biologics, Policy, Evaluation, and Licensing, VS, APHIS, 4700 River Road Unit 148, Riverdale, MD 20737–1231; phone (301) 851–3426, fax (301) 734–4314.

For information regarding the environmental assessment or the risk analysis, or to request a copy of the environmental assessment (as well as the risk analysis with confidential business information removed), contact Dr. Patricia L. Foley, Risk Manager, Center for Veterinary Biologics, Policy, Evaluation, and Licensing, VS, APHIS, 1920 Dayton Avenue, P.O. Box 844, Ames, IA 50010; phone (515) 337–6100, fax (515) 337–6120.

SUPPLEMENTARY INFORMATION: Under the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) is authorized to promulgate regulations designed to ensure that veterinary biological products are pure, safe, potent, and efficacious. Veterinary biological products include viruses, serums, toxins, and analogous products of natural or synthetic origin, such as vaccines, antitoxins, or the immunizing components of microorganisms intended for the diagnosis, treatment, or prevention of diseases in domestic animals.

APHIS issues licenses to qualified establishments that produce veterinary biological products and issues permits to importers of such products. APHIS also enforces requirements concerning production, packaging, labeling, and shipping of these products and sets standards for the testing of these products. Regulations concerning veterinary biological products are contained in 9 CFR parts 101 to 124.

Veterinary biological products meeting the requirements of the regulations may be considered for addition to the U.S. National Veterinary Stockpile (NVS). The NVS is the nation's repository of vaccines and other critical veterinary supplies and equipment. It exists to augment State and local resources in responding to high-consequence livestock diseases that could potentially devastate U.S. agriculture, seriously affect the economy, and threaten public health. The NVS vaccines would be used in APHIS programs or under U.S. Department of Agriculture control or supervision. The manufacturer of Classical Swine Fever Virus Vaccine, Live Pestivirus Vector, has been awarded a contract to supply the vaccine to the NVS for emergency use in the United States. The addition of this vaccine to the stockpile would not preclude private development and use of other vaccines meeting the requirements of the Virus-Serum-Toxin Act.

To determine whether to authorize shipment and grant approval for the use of the imported product referenced in this notice, APHIS has considered the potential effects of this product on the safety of animals, public health, and the environment. Using a risk analysis and other relevant data, APHIS has prepared an environmental assessment (EA) concerning the safety testing of the following unlicensed veterinary biological product:

Requester: Zoetis, Inc.

Product: Classical Swine Fever Virus Vaccine, Live Pestivirus Vector.

The above-mentioned product is a single-dose 1-mL modified live product for emergency vaccination in an outbreak situation. The proposed indication is intramuscular administration to healthy swine 6 weeks of age or older as an aid in preventing mortality and viremia caused by classical swine fever virus.

Possible Field Use Locations: Where Federal and State authorities agree on use.

The EA has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Unless substantial issues with adverse environmental impacts are raised in response to this notice, APHIS intends to issue a finding of no significant impact based on the EA and authorize the importation under permit of the above product for distribution and sale for emergency use following the close of the comment period for this notice, provided the product meets all other requirements for approval.

Authority: 21 U.S.C. 151–159.

Done in Washington, DC, this 6th day of May 2016.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2016–11149 Filed 5–11–16; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2015–0042]

Notice of Availability of an Evaluation of the Fever Tick Status of the State of Chihuahua, Excluding the Municipalities of Guadalupe y Calvo and Morelos

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability.

SUMMARY: We are notifying the public that we have prepared an evaluation of the State of Chihuahua, excluding the municipalities of Guadalupe y Calvo and Morelos, for fever ticks. The evaluation concludes that this region is free from fever ticks, and that ruminants imported from the area pose a low risk of exposing ruminants within the United States to fever ticks. We are making the evaluation available for review and comment.

DATES: We will consider all comments that we receive on or before July 11, 2016.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0042.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2015–0042, Regulatory Analysis

and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0042* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Betzaida Lopez, Senior Staff Veterinarian, National Import Export Services, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737; (301) 851–3300.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 93 prohibit or restrict the importation of certain animals, birds, and poultry into the United States to prevent the introduction of communicable diseases of livestock and poultry. Subpart D of part 93 (§§ 93.400 through 93.436, referred to below as the regulations) governs the importation of ruminants; within the regulations, §§ 93.424 through 93.429 specifically address the importation of various ruminants from Mexico into the United States.

The regulations in paragraph (b)(1) of § 93.427 contain conditions for the importation of ruminants from regions of Mexico that we consider free from fever ticks (*Boophilus annulatus*). Regions of Mexico that we consider free from fever ticks are listed at *http://www.aphis.usda.gov/wps/portal/aphis/ourfocus/importexport.* Currently, the State of Sonora is the only region on this list.

Mexico has asked the Animal and Plant Health Inspection Service to recognize the State of Chihuahua, except the municipalties of Guadalupe y Calvo and Morelos, as a region free from fever ticks. In response to this request, we have prepared an evaluation of the fever tick status of this region. The evaluation concludes that the State of Chihuahua, excluding the municipalities of Guadalupe y Calvo and Morelos, is free from fever ticks, and that ruminants imported from the region pose a low risk of exposing ruminants within the United States to fever ticks.

We are making the evaluation available for public review and comment. The assessment is available on the Regulations.gov Web site (see **ADDRESSES** above) or by contacting the person listed in this document under the heading **FOR FURTHER INFORMATION CONTACT.** After the close of the comment period, we will notify the public of our final determination regarding the status of the State of Chihuahua, excluding the municipalities of Guadalupe y Calvo and Morelos, for fever ticks.

Authority: 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 6th day of May 2016.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2016–11150 Filed 5–11–16; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Secure Rural Schools Resource Advisory Committees

AGENCY: Forest Service, USDA.

ACTION: Call for Nominations.

SUMMARY: The United States Department of Agriculture (USDA) is seeking nominations for the Secure Rural Schools Resource Advisory Committees (SRS RACs) pursuant the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and the Federal Advisory Committee Act (FACA) (5 U.S.C., App. 2). Additional information on the SRS RACs can be found by visiting SRS RACs Web site at: *http://www.fs.usda.gov/pts/.*

DATES: Written nominations must be received by June 27, 2016. Nominations must contain a completed application packet that includes the nominee's name, resume, and completed Form AD–755 (Advisory Committee or Research and Promotion Background Information). The package must be sent to the address below.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** under Nomination and Application Information for the address of the SRS RAC Regional Coordinators accepting nominations.

FOR FURTHER INFORMATION CONTACT: David Bergendorf, Senior Program Specialist, Forest Service Secure Rural Schools Program, by telephone at (202) 205–1468, or by email at *dwbergendorf@fs.fed.us.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 5 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

In accordance with the provisions of FACA, the Secretary of Agriculture is seeking nominations for the purpose of improving collaborative relationships among people who use and care for National Forests and provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. The duties of SRS RACs include monitoring projects, advising the Secretary on the progress and results of monitoring efforts, and making recommendations to the Forest Service for any appropriate changes or adjustments to the projects being monitored by the SRS RACs.

SRS RACs Membership

The SRS RACs will be comprised of 15 members approved by the Secretary of Agriculture. SRS RACs membership will be fairly balanced in terms of the points of view represented and functions to be performed. The SRS RACs members will serve 4-year terms. The SRS RACs shall include representation from the following interest areas:

(1) Five persons that—

(a) represent organized labor or non-timber forest product harvester groups;

(b) represent developed outdoor recreation, off-highway vehicle users, or commercial recreation activities;

(c) represent energy and mineral development, or commercial or recreational fishing interests;

(d) represent the commercial timber industry; or

(e) hold Federal grazing or other land use permits, or represent nonindustrial private forest land owners, within the area for which the committee is organized.

(2) Five persons that represent—

(a) nationally recognized environmental organizations;

(b) regionally or locally recognized environmental organizations;

(c) dispersed recreational activities;

(d) archaeological and historical interests; or

(e) nationally or regionally recognized wild horse and burro interest groups, wildlife or hunting organizations, or watershed associations.

(3) Five persons that—

(a) hold State elected Office (or designee);

(b) hold county or local elected office;

(c) represent American Indian tribes within or adjacent to the area for which the committee is organized;

(d) are school officials or teachers; or

(e) represent the affected public at large.

In the event that a vacancy arises, the Designated Federal Officer (DFO) may fill the vacancy with a replacement member appointed by the Secretary, if an appropriate replacement member is available. In accordance with the Act, members of the SRS RAC shall serve without compensation. SRS RAC members and replacements may be allowed travel expenses and per diem for attendance at committee meetings, subject to approval of the DFO responsible for administrative support to the SRS RAC.

Nomination and Application Information

The appointment of members to the SRS RACs will be made by the Secretary of Agriculture. The public is invited to submit nominations for membership on the SRS RACs, either as a self-nomination or a nomination of any qualified and interested person. Any individual or organization may nominate one or more qualified persons to represent the interest areas listed above. To be considered for membership, nominees must:

1. Be a resident of the State in which the SRS RAC has jurisdiction;
2. Identify what interest group they would represent and how they are qualified to represent that interest group;
3. Provide a cover letter stating why they want to serve on the SRS RAC and what they can contribute;
4. Provide a resume showing their past experience in working successfully as part of a group working on forest management activities; and
5. Complete Form AD–755, Advisory Committee or Research and Promotion Background Information. The Form AD–755 may be obtained from the Regional Coordinators listed below or from the following SRS RACs Web site: *http://www.fs.usda.gov/main/pts/specialprojects/racs.* All nominations will be vetted by the Agency.

Nominations and completed applications for SRS RACs should be sent to the appropriate Forest Service Regional Offices listed below:

Northern Regional Office—Region I

Central Montana RAC, Flathead RAC, Gallatin RAC, Idaho Panhandle RAC, Lincoln RAC, Mineral County RAC, Missoula RAC, Missouri River RAC, North Central Idaho RAC, Ravalli RAC, Sanders RAC, Southern Montana RAC, Southwest Montana RAC, Tri-County RAC

Jerry Drury, Northern Regional Coordinator (Montana), Forest Service, Federal Building, 200 East Broadway, Missoula, Montana 59807–7669, (406) 329–3149.

Carol McKenzie, Northern Regional Coordinator (Idaho), Forest Service, 3815 Schreiber Way, Coeur d'Alene, Idaho 83815–8363, (208) 765–7380.

Rocky Mountain Regional Office—Region II

Bighorn RAC, Black Hills RAC, Grand Mesa Uncompahgre Gunnison (GMUG) RAC, Medicine Bow-Routt RAC, Pike-San Isabel RAC, Saguache RAC, San Juan RAC, Shoshone RAC, Upper Rio Grande RAC

Jace Ratzlaff, Rocky Mountain Regional Coordinator, Forest Service, 740 Simms Street, Golden, Colorado 80401, (719) 469–1254.

Southwestern Regional Office—Region III

Coconino County RAC, Eastern Arizona RAC, Northern New Mexico RAC, Southern Arizona RAC, Southern New Mexico RAC, Yavapai RAC

Mark Chavez, Southwestern Regional Coordinator, Forest Service, 333 Broadway SE., Albuquerque, New Mexico 87102, (505) 842–3393.

Intermountain Regional Office—Region IV

Ashley RAC, Bridger-Teton RAC, Central Idaho RAC, Dixie RAC, Eastern Idaho RAC, Elko RAC, Fishlake RAC, Humboldt (NV) RAC, Lyon-Mineral RAC, Manti-La Sal RAC, South Central Idaho RAC, Southwest Idaho RAC, Uinta-Wasatch Cache RAC, White Pine-Nye RAC

Andy Brunelle, Intermountain Regional Coordinator (Idaho/Utah), Forest Service, Federal Building, 324 25th Street, Ogden, Utah 84401, (208) 344–1770.

Cheva Gabor, Intermountain Regional Coordinator (Nevada), Forest Service, 35 College Drive, South Lake Tahoe, California 96150, (530) 543–2600.

Pacific Southwest Regional Office—Region V

Alpine County RAC, Amador County RAC, Butte County RAC, Del Norte County RAC, El Dorado County RAC, Fresno County RAC, Glenn and Colusa Counties RAC, Humboldt County RAC, Kern and Tulare Counties RAC, Lake County RAC, Lassen County RAC, Madera County RAC, Mendocino County RAC, Modoc County RAC, Nevada and Placer Counties RAC, Plumas County RAC, Shasta County RAC, Sierra County RAC, Siskiyou County RAC, Tehama RAC, Trinity County RAC, Tuolumne and Mariposa Counties RAC

Marty Dumpis, Pacific Southwest Regional Coordinator, Forest Service, 1323 Club Drive, Vallejo, California 94592, (909) 599–1267.

Pacific Northwest Regional Office—VI

Columbia County RAC, Colville RAC, Deschutes and Ochoco RAC, Fremont and Winema RAC, Hood and Willamette RAC, North Gifford Pinchot RAC, North Mt. Baker-Snoqualmie RAC, Northeast Oregon Forests RAC, Olympic Peninsula RAC, Rogue and Umpqua RAC, Siskiyou (OR) RAC, Siuslaw RAC, Snohomish County RAC, South Gifford Pinchot RAC, South Mt. Baker-Snoqualmie RAC, Southeast Washington Forest RAC, Wenatchee-Okanogan RAC

Amber Sprinkle, Pacific Northwest Regional Office, Forest Service, 595 Northwest Industrial Way, Estacada, Oregon 97023, (503) 808–2242.

Glen Sachet, Pacific Northwest Regional Office, Forest Service, 1220 Southwest 3rd Avenue, Portland, Oregon 97204, (503) 545–6083.

Kathy Anderson, Pacific Northwest Regional Office, Forest Service, 1220 Southwest 3rd Avenue, Portland, Oregon 97204, (503) 545–6083.

Southern Regional Office—Region VIII

Alabama RAC, Cherokee RAC, Daniel Boone RAC, Davy Crockett RAC, Delta-Bienville RAC, DeSoto RAC, Florida National Forests RAC, Francis Marion-Sumter RAC, Holly Springs-Tombigbee RAC, Kisatchie RAC, Ozark-Ouachita RAC, Sabine-Angelina RAC, Southwest Mississippi RAC, Virginia RAC

Steve Bekkerus, Southern Regional Coordinator, Forest Service, 1720 Peachtree Road, Northwest, Atlanta, Georgia 30309, (404) 347–7240.

Eastern Regional Office—Region IX

Allegheny RAC, Chequamegon RAC, Chippewa National Forest RAC, Eleven Point RAC, Gogebic RAC, Hiawatha East RAC, Hiawatha West RAC, Huron-Manistee RAC, Nicolet RAC, Ontonagon RAC, Superior RAC, West Virginia RAC

David Scozzafave, Eastern Regional Coordinator, Forest Service, 626 East Wisconsin Avenue, Milwaukee, Wisconsin 53202, (414) 297–3602.

Alaska Regional Office—Region X

Juneau RAC, Kenai Peninsula-Anchorage Borough RAC, Ketchikan RAC, Lynn Canal-Icy Strait RAC, Prince of Wales Island RAC, Prince William Sound RAC, Sitka RAC, Wrangell-Petersburg RAC, Yakutat RAC

Dawn Heutte, Alaska Regional Coordinator, Forest Service, 709 West 9th Street, Room 559A, Juneau, Alaska 99801–1807, (907) 586–7836.

Equal opportunity practices in accordance with USDA policies shall be followed in all appointments to the Panel. To ensure that the recommendations of the Panel have taken into account the needs of the diverse groups served by USDA, membership will, to the extent practicable, include individuals with demonstrated ability to represent all racial and ethnic groups, women and men, and persons with disabilities.

Dated: May 3, 2016.

Gregory L. Parham,

Assistant Secretary for Administration.

[FR Doc. 2016–11165 Filed 5–11–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Rural Utility Service

Submission for OMB Review; Comment Request

May 6, 2016.

The Department of Agriculture has submitted the following information collection requirement(s) to Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by June 13, 2016 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Utilities Service

Title: 7 CFR 1730, Review Rating Summary.

OMB Control Number: 0572–0025.

Summary of Collection: The Rural Utilities Service (RUS) manages loan programs in accordance with the Rural Electrification Act (RE Act) of 1936, 7 U.S.C. 901 *et seq.*, as amended. An important part of safeguarding loan security is to see that RUS financed facilities are being responsible used, adequately operated, and adequately maintained. Future needs have to be anticipated to ensure that facilities will continue to produce revenue and loans will be repaid as required by the RUS mortgage. Regular periodic operations and maintenance (O&M) review can identify and correct inadequate O&M practices before they cause extensive harm to the system. Inadequate O&M practices can result in public safety hazards, increased power outages for consumers, added expense for emergency maintenance, and premature aging of the borrower's systems, which could increase the loan security risk to RUS.

Need and Use of the Information: RUS will collect information using form 300 Review Rate Summary to identity items that may be in need of additional attention; to plan corrective actions when needed; to budget funds and manpower for needed work; and to initiate ongoing programs as necessary to avoid or minimize the need for "catch-up" programs.

Description of Respondents: Not-for-profit institutions; Business or other for-profit.

Number of Respondents: 208.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 832.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2016–11139 Filed 5–11–16; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–30–2016]

Foreign-Trade Zone (FTZ) 125—South Bend, Indiana; Notification of Proposed Production Activity; LionsHead Specialty Tire & Wheel, LLC (Wheel Assemblies for Specialty Applications); Goshen, Indiana

LionsHead Specialty Tire & Wheel, LLC (LionsHead) submitted a notification of proposed production activity to the FTZ Board for its facility in Goshen, Indiana. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on May 3, 2016.

A separate application for usage-driven site designation at the LionsHead facility will be submitted and will be processed under Section 400.38 of the FTZ Board's regulations. The facility is used to produce wheel assemblies for specialty applications, including trailers and golf carts. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials and components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt LionsHead from customs duty payments on the foreign-status components used in export production. On its domestic sales, LionsHead would be able to choose the duty rates during customs entry procedures that apply to wheel assemblies for non-agricultural trailers, golf carts, farm feed tenders, grain wagons, all-terrain vehicles (ATVs), recreational vehicles (RVs), handling equipment, forklifts and other types of industrial lifting equipment (duty rates–free to 3.1%) for the foreign-status inputs noted below. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The components sourced from abroad include: Radial and bias-ply tires for agricultural machinery, forklifts, ATVs, golf carts, lawn and garden equipment, and passenger cars; specialty tire (ST)-rated radial and bias-ply tires for trailers; steel and aluminum wheels for agricultural machinery, trailers, golf carts, ATVs, forklifts, and lawn and garden equipment; and, steel and aluminum wheel parts (duty rates range from free to 4%).

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is June 21, 2016.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the "Reading Room" section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz*.

For further information, contact Diane Finver at *Diane.Finver@trade.gov* or (202) 482–1367.

Dated: May 5, 2016.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2016–11236 Filed 5–11–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–983]

Drawn Stainless Steel Sinks From the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2014–2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Department) is conducting an administrative review of the antidumping duty order on drawn stainless steel sinks (drawn sinks) from the People's Republic of China (PRC), for the period of review (POR), April 1, 2014, through March 31, 2015. We preliminarily find that respondent Guangdong Dongyuan Kitchenware Industrial Co., Ltd. (Dongyuan) made sales of the subject merchandise in the United States at prices below normal value (NV). In addition, we preliminarily find that the other mandatory respondents, B&R Industries Limited (B&R Industries), Zhongshan Newecan Enterprise Development Corporation (Newecan), and Zhongshan Superte Kitchenware Co., Ltd./Superte invoiced as Foshan Zhaoshun Trade Co., Ltd. (Superte), are part of the PRC-wide entity and will receive the rate of that entity, which is not under review. We are also preliminarily granting separate rates to Feidong Import and Export Co., Ltd. (Feidong) and Ningbo Afa Kitchen and Bath Co., Ltd. (Ningbo Afa),[1] which demonstrated eligibility for separate rate status, but were not selected for individual examination. Additionally, we are preliminarily including nine companies[2] that failed to demonstrate their entitlement to a separate rate as part of the PRC-wide entity. Finally, we preliminarily find that Shenzhen Kehuaxing Industrial Ltd. (Kehuaxing) made no shipments of subject merchandise during the POR. If these preliminary results are adopted in the final results of this review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. Interested parties are invited to comment on these preliminary results.

DATES: *Effective Date:* May 12, 2016.

FOR FURTHER INFORMATION CONTACT: Brian C. Smith or Brandon Custard, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1766 and (202) 482–1823, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The products covered by the order include drawn stainless steel sinks. Imports of subject merchandise are currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7324.10.0000 and 7324.10.0010. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.[3]

Tolling of Deadline of Preliminary Results of Review

As explained in the memorandum from the Acting Assistant Secretary for Enforcement and Compliance, the Department has exercised its discretion to toll all administrative deadlines due to the recent closure of the Federal Government. All deadlines in this segment of the proceeding have been extended by four business days.[4]

Methodology

The Department is conducting this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act). For the mandatory respondent Dongyuan, export prices were calculated in accordance with section 772 of the Act. Because the PRC is a non-market economy (NME) within the meaning of section 771(18) of the Act, NV was calculated in accordance with section 773(c) of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov;* the Preliminary Decision Memorandum is also available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on Enforcement and Compliance's Web site at *http://www.trade.gov/enforcement/*. The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content. A list of the topics discussed in the Preliminary Decision Memorandum is attached as the Appendix to this notice.

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[1] On March 21, 2016, the Department determined that Ningbo Afa is the successor-in-interest to Yuyao Afa Kitchenware Co., Ltd. (Yuyao Afa), and stated that Ningbo Afa will be assigned an updated cash deposit rate based on the final results of this administrative review. *See Notice of Final Results of Antidumping Duty Changed Circumstances Review: Drawn Stainless Steel Sinks from the People's Republic of China,* 81 FR 16138, 16139 (March 25, 2016).

[2] These nine companies are: (1) J&C Industries Enterprise Limited (J&C Industries); (2) Foshan Shunde MingHao Kitchen Utensils Co., Ltd. (MingHao); (3) Franke Asia Sourcing Ltd. (Franke); (4) Grand Hill Work Company (Grand Hill); (5) Hangzhou Heng's Industries Co., Ltd. (Heng's Industries); (6) Jiangmen Hongmao Trading Co., Ltd. (Hongmao); (7) Jiangxi Zoje Kitchen & Bath Industry Co., Ltd. (Zoje); (8) Ningbo Oulin Kitchen Utensils Co., Ltd. (Ningbo Oulin); (9) Shunde Foodstuffs Import & Export Company Limited of Guangdong (Shunde Foodstuffs).

[3] For a complete description of the Scope of the Order, *see* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Decision Memorandum for Preliminary Results of the Antidumping Duty Administrative Review: Drawn Stainless Steel Sinks from the People's Republic of China," issued concurrently with and hereby adopted by this notice (Preliminary Decision Memorandum).

[4] *See* Memorandum to the Record from Ron Lorentzen, Acting A/S for Enforcement & Compliance, "Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm Jonas" (January 27, 2016).

Preliminary Determination of No Shipments

On June 24, 2015, Kehuaxing submitted a timely-filed certification that it had no exports, sales, or entries of subject merchandise during the POR.[5] Additionally, our inquiry to CBP did not identify any POR entries of Kehuaxing's subject merchandise. Based on the foregoing, the Department preliminarily determines that Kehuaxing did not have any reviewable transactions during the POR. For additional information regarding this determination, *see* the Preliminary Decision Memorandum.

Consistent with our practice in NME cases, the Department is not rescinding this administrative review for Kehuaxing, but intends to complete the review and issue appropriate instructions to CBP based on the final results of the review.[6]

Preliminary Results of Review

Because B&R Industries, Newecan, and Superte withdrew from participation in the review and did not respond to the Department's requests for information, the Department preliminarily finds these companies to be part of the PRC-wide entity.[7] Additionally, because Shunde Foodstuffs, Franke, Grand Hill, Heng's Industries, Hongmao, J&C Industries, MingHao, Ningbo Oulin, and Zoje did not submit a separate rate application or certification by the deadline established in the *Initiation Notice,* or make a claim that they had no exports, sales, or entries of subject merchandise during the POR, we preliminarily find that these companies failed to establish their entitlement to a separate rate, and therefore, remain a part of the PRC-wide entity. The rate previously established for the PRC-wide entity is 76.45 percent.[8] This rate is not under review.

The Department preliminarily determines that the following weighted-average dumping margins exist for the period April 1, 2014, through March 31, 2015:

Exporters	Weighted-average dumping margin (%)
Guangdong Dongyuan Kitchenware Industrial Co., Ltd	1.65
Ningbo Afa Kitchen and Bath Co., Ltd*	1.65
Feidong Import and Export Co., Ltd*	1.65

*This company demonstrated that it qualified for a separate rate in this administrative review. Consistent with the Department's practice, we preliminarily assigned this company a rate of 1.65 percent—the rate calculated for the mandatory respondent in this review.[9]

Disclosure and Public Comment

The Department intends to disclose to the parties the calculations performed for these preliminary results within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review.[10] Rebuttals to case briefs may be filed no later than five days after the written comments are filed, and all rebuttal comments must be limited to comments raised in the case briefs.[11]

Any interested party may request a hearing within 30 days of publication of this notice.[12] Hearing requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.[13]

Unless otherwise extended, the Department intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in the case briefs, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.[14] The Department intends to issue appropriate assessment instructions to CBP 15 days after the publication of the final results of this review.

For Dongyuan, if we continue to calculate a weighted-average dumping margin that is not zero or *de minimis* (*i.e.,* less than 0.5 percent) in the final results, we will calculate importer- (or customer-) specific per-unit duty assessment rates based on the ratio of the total amount of dumping calculated for the importer's (or customer's) examined sales to the total sales quantity associated with those sales, in accordance with 19 CFR 351.212(b)(1).[15] The Department will also calculate (estimated) *ad valorem* importer-specific assessment rates with which to assess whether the per-unit assessment rate is *de minimis.* We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific *ad valorem* assessment rate calculated in the final results of this review is not zero or *de minimis.* Where either Dongyuan's *ad valorem* weighted-average dumping margin is zero or *de*

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[5] *See* Letter from Kehuaxing, "Drawn Stainless Steel Sinks from People's Republic of China; A–570–983; Certification of No Sales by Shenzhen Kehuaxing Industrial Ltd." (June 24, 2015).

[6] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694, 65694–95 (October 24, 2011) (*NME AD Assessment*) and the "Assessment Rates" section, below.

[7] *See* Preliminary Decision Memorandum. Pursuant to the Department's change in practice, the Department no longer considers the NME entity as an exporter conditionally subject to administrative reviews. *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963, 65970 (November 4, 2013). Under this practice, the NME entity will not be under review unless a party specifically requests, or the Department self-initiates, a review of the entity. Because no party requested a review of the entity, the entity is not under review and the entity's rate is not subject to change.

[8] The PRC-wide rate determined in the investigation was 76.53 percent. *See Drawn Stainless Steel Sinks from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order,* 78 FR 21592 (April 11, 2013). This rate was adjusted for export subsidies and estimated domestic subsidy pass through to determine the cash deposit rate (76.45 percent) collected for companies in the PRC-wide entity. *See* explanation in *Drawn Stainless Steel Sinks From the People's Republic of China: Investigation, Final Determination,* 78 FR 13019 (February 26, 2013).

[9] *See Stainless Steel Bar From India: Final Results of the Antidumping Duty Administrative Review,* 77 FR 39467 (July 3, 2012) and accompanying Issues and Decision Memorandum at 12.

[10] *See* 19 CFR 351.309(c).

[11] *See* 19 CFR 351.309(d).

[12] *See* 19 CFR 351.310(c).

[13] *See* 19 CFR 351.310(d).

[14] *See* 19 CFR 351.212(b)(1).

[15] In these preliminary results, the Department applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012).

minimis, or an importer-(or customer-) specific *ad valorem* assessment rate is zero or *de minimis,*[16] we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

For Feidong and Ningbo Afa, the respondents which were not selected for individual examination in this administrative review and which qualified for a separate rate, the assessment rate will be equal to the rate calculated for the mandatory respondent in this review (*i.e.,* 1.65 percent).[17]

For the final results, if we continue to treat the non-responding mandatory respondents B&R Industries, Newecan, and Superte, as part of the PRC-wide entity, we will instruct CBP to apply an *ad valorem* assessment rate of 76.45 percent to all entries of subject merchandise during the POR which were produced and/or exported by those companies.

The Department announced a refinement to its assessment practice in NME cases. Pursuant to this refinement in practice, for entries that were not reported in the U.S. sales database submitted by the company individually examined during this review, the Department will instruct CBP to liquidate such entries at the PRC-wide rate. In addition, if we continue to find that Kehuaxing had no shipments of the subject merchandise, any suspended entries of subject merchandise from Kehuaxing will be liquidated at the PRC-wide rate.[18]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the companies listed above that have a separate rate, the cash deposit rate will be that rate established in the final results of this review (except, if the rate is zero or *de minimis,* then a cash deposit rate of zero will be established for that company); (2) for previously investigated or reviewed PRC and non-PRC exporters that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the rate for the PRC-wide entity, which is 76.45 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter(s) that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these preliminary results of review in accordance with sections 751(a)(l) and 777(i)(l) of the Act and 19 CFR 351.213.

Dated: May 5, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Discussion of the Methodology
  A. Preliminary Determination of No Shipments
  B. Non-Market Economy Country Status
  C. Separate Rates Determination
  1. Absence of *De Jure* Control
  2. Absence of *De Facto* Control
  3. Separate Rate for Non-Selected Companies
  D. Companies Preliminarily Considered Part of the PRC-Wide Entity
  1. B&R Industries, Newecan, and Superte
  2. Shunde Foodstuffs, Franke, Grand Hill, Heng's Industries, Hongmao, J&C Industries, MingHao, Ningbo Oulin, and Zoje
  E. Surrogate Country
  1. Economic Comparability
  2. Significant Producer of Comparable Merchandise
  3. Data Availability
  F. Date of Sale
  G. Comparisons to Normal Value
  1. Determination of Comparison Method
  2. Results of the Differential Pricing Analysis
  3. Export Price
  4. VAT
  5. Normal Value
  H. Factor Valuation Methodology
  I. Adjustment Under Section 777A(f) of the Act
  J. Currency Conversion
V. Conclusion

[FR Doc. 2016–11249 Filed 5–11–16; 8:45 am]

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[16] *See* 19 CFR 351.106(c)(2).

[17] *See Drawn Stainless Steel Sinks from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review,* 80 FR 26227, 26228 (May 7, 2015); unchanged in *Drawn Stainless Steel Sinks From the People's Republic of China: Final Results of the Antidumping Duty Administrative Review; 2012–2014,* 80 FR 69644 (November 10, 2015).

[18] For a full discussion of this practice, *see NME AD Assessment.*

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–893]

Certain Frozen Warmwater Shrimp From the People's Republic of China: Rescission of Antidumping Duty Administrative Review; 2015–2016

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("the Department") is rescinding the administrative review of the antidumping duty order on certain frozen warmwater shrimp ("shrimp") from the People's Republic of China ("PRC") for the period February 1, 2015 through January 31, 2016.

DATES: *Effective Date:* May 12, 2016.

FOR FURTHER INFORMATION CONTACT: Kabir Archuletta, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2593.

SUPPLEMENTARY INFORMATION:

Background

On April 7, 2016, based on a timely request for review on behalf of the Ad Hoc Shrimp Trade Action Committee ("Petitioner")[1] and the American Shrimp Processors Association ("Domestic Processors"),[2] the Department published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order on shrimp from the PRC covering the period February 1, 2015, through January 31, 2016.[3] The review covers 74 companies. On April 18, 2016, and April 25, 2016, Petitioner and Domestic Processors withdrew their requests for an administrative review on all companies listed in the *Initiation Notice.*[4] No other party requested a review of these companies or any other exporters of subject merchandise.

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[1] *See* Letter to the Secretary of Commerce from the Ad Hoc Shrimp Trade Action Committee ("AHSTAC") "Certain Frozen Warmwater Shrimp from the People's Republic of China: Request for Administrative Reviews" (February 24, 2016).

[2] *See* Letter to the Secretary of Commerce from the American Shrimp Processors Association ("ASPA") "Administrative Review of the Antidumping Duty Order Covering Frozen Warmwater Shrimp from the People's Republic of China (POR 11: 02/01/15–01/31/16): American Shrimp Processors Association's Request for an Administrative Review" (February 29, 2016).

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if the party that requested the review withdraws its request within 90 days of the publication of the notice of initiation of the requested review. In this case, Petitioner and Domestic Processors timely withdrew their request by the 90-day deadline, and no other party requested an administrative review of the antidumping duty order. As a result, pursuant to 19 CFR 351.213(d)(1), we are rescinding the administrative review of the antidumping order on shrimp from the PRC for the period February 1, 2015, through January 31, 2016, in its entirety.

Assessment

The Department will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all appropriate entries. Because the Department is rescinding this administrative review in its entirety, the entries to which this administrative review pertained shall be assessed antidumping duties at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions to CBP 15 days after the publication of this notice in the **Federal Register**, if appropriate.

Notifications

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a final reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: May 4, 2016.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2016–11239 Filed 5–11–16; 8:45 am]

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[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 81 FR 20324 (April 7, 2016) ("*Initiation Notice*").

[4] *See* Letter to the Secretary of Commerce from Petitioner "Certain Frozen Warmwater Shrimp from the People's Republic of China: Domestic Producers' Withdrawal of Review Requests" (April 18, 2016); Letter to the Secretary of Commerce from Domestic Processors "Administrative Review of Antidumping Duty Order Covering Certain Frozen Warmwater Shrimp From the People's Republic of China: Withdrawal of Review Request on Behalf of the American Shrimp Processors Association" (April 25, 2016).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–033]

Large Residential Washers From the People's Republic of China: Postponement of Preliminary Determination of Antidumping Duty Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* May 12, 2016.

FOR FURTHER INFORMATION CONTACT: David Goldberger at (202) 482–4136 or Brian Smith at (202) 482–1766, Office II, AD/CVD Operations, Enforcement and Compliance, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On January 5, 2016, the Department of Commerce (the Department) initiated the antidumping duty investigation of large residential washers (washing machines) from the People's Republic of China (PRC).[1] The notice of initiation stated that the Department, in accordance with section 733(b)(1)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.205(b)(1), would issue its preliminary determination for this investigation, unless postponed, no later than 140 days after the date of the initiation. As explained in the memorandum from the Acting Assistant Secretary for Enforcement and Compliance, the Department has exercised its discretion to toll all administrative deadlines due to the recent closure of the Federal Government.[2] All deadlines in this investigation have been extended by four business days.[3] The revised deadline for the preliminary determination of this antidumping duty investigation is currently May 31, 2016.[4]

Period of Investigation

The period of investigation is April 1, 2015, through September 30, 2015.

Postponement of Preliminary Determination

Section 733(c)(1)(A) of the Act permits the Department to postpone the time limit for the preliminary determination if it receives a timely request from the petitioner for postponement. The Department may postpone the preliminary determination under section 733(c)(1) of the Act no later than 190 days after the date on which the administering authority initiates an investigation.

On May 2, 2016, Whirlpool Corporation (the petitioner), made a timely request pursuant to section 733(c)(1) of the Act, 19 U.S.C. 1673(c)(1) and 19 CFR 351.205(e) for a 50-day postponement of the preliminary determination in this investigation.[5] The petitioner stated that a postponement is necessary given the unprecedented number of factors of production that need to be accurately classified and valued, and the amount of time that will be needed for the Department to conduct a complete and thorough analysis. The petitioner further stated that a postponement is needed to allow time to address the various deficiencies in the questionnaire responses submitted in this case. The petitioner submitted its request more than 25 days before the scheduled date of the preliminary determination.[6]

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[1] *See Large Residential Washers From the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation,* 81 FR 1398 (January 12, 2016).

[2] *See* Memorandum to the Record from Ron Lorentzen, Acting A/S for Enforcement and Compliance, "Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm Jonas" (January 27, 2016).

[3] *Id.*

[4] Where the deadline falls on a weekend/holiday, the appropriate date is the next business day. Because the deadline for the preliminary determination of this antidumping duty investigation is Monday, May 30, 2016, a federal holiday, the appropriate date is the next business day, Tuesday, May 31, 2016.

[5] *See* Letter from the petitioner, "Large Residential Washers from the People's Republic of China: Petitioner's Request for Extension of the Preliminary Determination" (May 2, 2016).

For the reasons stated above, and because there are no compelling reasons to deny the petitioner's request, the Department is postponing the preliminary determination in this investigation in accordance with section 733(c)(1)(A) of the Act and 19 CFR 351.205(b)(2) and (e) by 50 days until July 19, 2016.[7]

The deadline for the final determination will continue to be 75 days after the date of the preliminary determination, unless extended.

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: May 5, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2016–11244 Filed 5–11–16; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE617

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will hold a two and a half day meeting of its Standing, Socioeconomic, *Shrimp, Spiny Lobster,* and *Reef Fish* Scientific and Statistical Committees (SSC).

DATES: The meeting will begin at 9 a.m. on Wednesday, June 1, 2016, and end at 12 noon on Friday, June 3, 2016. To view the agenda, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The meeting will be held at the Hilton Westshore Tampa Airport Hotel, 2225 N. Lois Avenue, Tampa, FL 33607; telephone: (813) 877–6688.

Council address: Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607; telephone: (813) 348–1630.

FOR FURTHER INFORMATION CONTACT: Steven Atran, Senior Fishery Biologist, Gulf of Mexico Fishery Management Council; *steven.atran@gulfcouncil.org,* telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION:

Agenda

Day 1—Wednesday, June 1, 2016; 9 a.m.–5 p.m.

I. Introductions and Adoption of Agenda
II. Selection of SSC representative at June, 2016 Council meeting

Standing and Socioeconomic SSC Session

III. Socioeconomic considerations for sector management
  a. *Reef Fish* Amendment 41 (*Red Snapper* Charter for Hire)
  b. *Reef Fish* Amendment 42 (*Reef Fish* Headboat Management)
IV. Grouper/Tilefish IFQ 5-year Review (Market Power Analysis)

Standing, Socioeconomic, and *Shrimp* SSC Session

V. Approval of March 8, 2016 Standing and Special *Shrimp* SSC minutes
VI. *Shrimp* Amendment 17B (OY, MSY, number of permits, permit pool, transit provisions)
  a. Review of amendment
  b. Aggregate MSY/OY Working Group summary

Standing, Socioeconomic, and *Spiny Lobster* SSC Session

VII. Approval of *spiny lobster* portion of March 10, 2015 Standing, Special *Shrimp,* and Special *Spiny Lobster* SSC minutes
VIII. Review of 2014/2015 and 2015/2016 (preliminary) *Spiny Lobster* Landings
  a. *Spiny Lobster* Review Panel summary
  b. *Spiny Lobster* AP summary
IX. Other Non-*Reef Fish* Business

Standing and *Reef Fish* SSC Session

X. Approval of January 5–6, 2016 Standing and Special *Reef Fish* SSC minutes
XI. SSC members serving as Council state designees
XII. Discussion of Methods to Address Recreational *Red Snapper* ACL Underharvests

Day 2—Thursday, June 2, 2016; 8:30 a.m.–5 p.m.

Standing and *Reef Fish* SSC Session (continued)

XIII. Review and Approval of Terms of Reference
  a. Gag update assessment
  b. *Greater amberjack* update assessment
XIV. Review of Research and Operational Cycles for SEDAR Stock Assessments
XV. Review of SEDAR Assessment Schedule
  a. Review of SEDAR schedule as of April 2016
  b. Council recommendations for 2019 stock assessments
XVI. Decision Tool for *Gray Triggerfish* Bag Limits, Size Limits, and Closed Season Analyses
XVII. SEDAR 45 *Vermilion Snapper* standard assessment
XVIII. Reevaluation of SSC Recommendation for *Hogfish* Equilibrium ABC
XIX. OY Exceeding MSY in Some Scenarios

Day 3—Friday, June 2, 2016; 8:30 a.m.–12 noon

Standing and *Reef Fish* Session (continued)

XX. Review of Draft Amendment 44—MSST and MSY Proxies for *Reef Fish* Stocks
XXI. *Reef Fish* Other Business

— Meeting Adjourns —

The Agenda is subject to change, and the latest version along with other meeting materials will be posted on the Council's file server. To access the file server, the URL is *https://public.gulfcouncil.org:5001/webman/index.cgi,* or go to the Council's Web site and click on the FTP link in the lower left of the Council Web site (*http://www.gulfcouncil.org*). The username and password are both "gulfguest." Click on the "Library Folder", then scroll down to "SSC meeting-2016–06."

The meeting will be webcast over the internet. A link to the webcast will be available on the Council's Web site, *http://www.gulfcouncil.org.*

Although other non-emergency issues not on the agenda may come before the Scientific and Statistical Committee for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions of the Scientific and Statistical Committee will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take action to address the emergency.

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[6] *See* 19 CFR 351.205(e).

[7] Where the deadline falls on a weekend/holiday, the appropriate date is the next business day. Because 190 days after the date on which the administering authority initiated this investigation is Wednesday, July 13, 2016, and all deadlines in this investigation were extended by four business days, the appropriate date is Tuesday, July 19, 2016.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Pereira at the Gulf Council Office (see **ADDRESSES**), at least 5 working days prior to the meeting.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 9, 2016.

Jeffrey N. Lonergan,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–11207 Filed 5–11–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE618

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Mackerel-Squid-Butterfish (MSB) Monitoring Committee will meet via webinar to develop recommendations for future MSB specifications.

DATES: The meeting will be held Tuesday, May 31, 2016, at 1:30 p.m. and end by 4 p.m.

ADDRESSES: The meeting will be held via webinar with a telephone-only connection option: *http://mafmc.adobeconnect.com/msb2016moncom/.*

Council address: Mid-Atlantic Fishery Management Council, 800 N. State St., Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D. Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 526–5255. The Council's Web site, *www.mafmc.org* will also have details on webinar access and any background materials.

SUPPLEMENTARY INFORMATION: The Council's MSB Monitoring Committee will meet to develop recommendations for future MSB specifications. There will be time for public questions and comments. The Council utilizes the Monitoring Committee recommendations at each June Council meeting when setting the subsequent years' MSB specifications.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: May 9, 2016.

Jeffrey N. Lonergan,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–11198 Filed 5–11–16; 8:45 am]

BILLING CODE 3510–22–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Fair Lending Report of the Consumer Financial Protection Bureau, April 2016

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Fair Lending Report of the Consumer Financial Protection Bureau.

SUMMARY: The Bureau of Consumer Financial Protection (CFPB or Bureau) is issuing its fourth Fair Lending Report of the Consumer Financial Protection Bureau (Fair Lending Report) to Congress. We are committed to ensuring fair access to credit and eliminating discriminatory lending practices. This report describes our fair lending activities in prioritization, supervision, enforcement, rulemaking, research, interagency coordination, and outreach for calendar year 2015.

DATES: The Bureau released the April 2016 Fair Lending Report on its Web site on April 29, 2016.

FOR FURTHER INFORMATION CONTACT: Anita Visser, Policy Advisor to the Director of Fair Lending, Office of Fair Lending and Equal Opportunity, Consumer Financial Protection Bureau, 1–855–411–2372.

SUPPLEMENTARY INFORMATION:

[1]. Fair Lending Report of the Consumer Financial Protection Bureau, April 2016

Message From Richard Cordray, Director of the CFPB

When Congress established the Consumer Financial Protection Bureau, the goal was to shine a light on unfair and discriminatory practices in the financial system. The legislation specifically tasked the Office of Fair Lending and Equal Opportunity with this critical obligation, but our commitment to finding and eliminating these practices extends throughout the Bureau. Indeed, ensuring fair and nondiscriminatory access to credit goes to the core of the Bureau's mission: Protecting consumers and promoting openness in America's financial markets.

The past year has been especially productive for the Office of Fair Lending. In the mortgage market, they teamed up with the Department of Justice to resolve the largest redlining case in history against Hudson City Savings Bank (since acquired by M&T Bank), which will pay nearly $33 million in direct loan subsidies, funding for community programs and outreach, and a civil penalty. In that case, which arose out of a fair lending supervisory review at Hudson City, the Bureau found that Hudson City provided unequal access to credit by structuring its business to avoid and thus discourage access to mortgages for residents in majority-Black-and-Hispanic neighborhoods [1] in New York, New Jersey, Connecticut, and Pennsylvania. The Office of Fair Lending also resolved a significant discrimination case involving Provident Funding Associates based on our finding that over 14,000 African-American and Hispanic borrowers paid more in mortgage brokers' fees than did similarly-situated non-Hispanic White borrowers. The Office also helped revise the Home Mortgage Disclosure Act's Regulation C such that mortgage lenders will begin collecting a more comprehensive set of mortgage loan data starting in 2018, which will allow regulators, lenders, researchers, and the public to better pinpoint and address potential discrimination in the mortgage market, among other important goals.

The Office of Fair Lending also has continued to examine and investigate indirect auto lenders for compliance with the Equal Credit Opportunity Act. Last year brought two noteworthy results, with prominent consent orders issued for American Honda Finance Corporation and Fifth Third Bank. In both matters, the Bureau alleged that the lender's policy of discretionary dealer markup resulted in minority borrowers paying more for loans without regard to their creditworthiness. The lenders agreed to reduce substantially the amount of discretion they permit dealers to mark up such loans and to pay a combined total of $42 million in restitution to harmed consumers. Our supervisory and enforcement work remains ongoing, as shown by our recent similar action against Toyota Motor Credit, and I urge indirect auto lenders to carefully consider the terms of these orders as they evaluate compliance in their own lending programs.

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[1] "Majority-Black-and-Hispanic neighborhoods" or "majority-Black-and-Hispanic communities" means census tracts in which more than 50 percent of the residents are identified in the 2010 U.S. Census as either "Black or African American" or "Hispanic or Latino."

One tangible outcome of the Office of Fair Lending's dedication is the money they help return to harmed consumers. When an enforcement action is resolved, typically much more work must be done before consumers see the benefits. Last year, the Office worked with Synchrony Bank (formerly GE Capital Retail Bank) to complete payments of over $200 million to consumers who were excluded from debt relief offers because of their national origin. They also worked with PNC Bank (successor to National City Bank) to complete payments of over $35 million to tens of thousands of African-American and Hispanic borrowers who were charged higher prices on their mortgage loans. Finally, they worked with Ally Financial Inc. and Ally Bank to complete payments of over $80 million to over 300,000 borrowers who experienced discrimination in the pricing of Ally's auto loans. In addition to money returned to consumers through public enforcement actions, we achieve additional redress for consumers through the supervisory process. These results demonstrate the Office of Fair Lending's commitment to bettering the lives of consumers by ensuring fair, nondiscriminatory access to credit.

The list of fair lending successes is even longer, as this report attests. We share our work in many ways, including guidance through *Supervisory Highlights,* industry and consumer outreach, and productive discussions with policymakers, including members of Congress. We welcome such dialogue because an integral part of the Bureau's commitment to diversity and inclusion is engaging many different voices in a broad discussion of these critical issues. The pursuit of civil rights has always required perseverance, and I am proud of the work my Fair Lending colleagues do to move forward in this important area.

We are proud of the Bureau's work in 2015 and the successes of our Fair Lending team. And we are thankful for the continued interest that so many people have in our fair lending work.

Sincerely,

Richard Cordray

Message from Patrice Alexander Ficklin
Director, Office of Fair Lending and Equal Opportunity

This past year, 2015, has been one of tremendous growth and accomplishment for the CFPB's Office of Fair Lending and Equal Opportunity. From enforcement and supervision to outreach and rulemaking, our office is dedicated to using the tools Congress provided to achieve our mission: Fair, equitable, and nondiscriminatory credit for consumers.[2] After the whirlwind of getting on our feet and "standing up" the Bureau, we have continued to solidify our presence in now-familiar markets and explored new and emerging issues in other markets. This is an exciting new phase in the Bureau's tenure that promises to make lasting improvements in the lives of America's consumers.

As part of the Office of Fair Lending's statutory responsibility for oversight and enforcement of the Equal Credit Opportunity Act[3] (ECOA) and the Home Mortgage Disclosure Act[4] (HMDA), we carefully prioritize among market areas to best utilize our resources. The mortgage and auto markets represent two of the most significant consumer experiences with credit and weigh heavily in our prioritization process. Homes and cars are typically two of the largest and most important purchases for consumers, and the Bureau is committed to ensuring these transactions are fair and equitable for all consumers. Our efforts in 2015 have required approximately $108 million in restitution to consumers harmed by discrimination and additional monetary payments, including loan subsidies, increased consumer financial education, and civil money penalties. Our efforts have also resulted in heightened industry awareness and increased consumer financial education. This year, all four of our public enforcement actions related to these two markets, resulting in monetary remediation for harmed consumers and forward-looking mechanisms to prevent future discrimination. Mortgage and auto featured prominently in our non-public supervisory work as well. Moreover, in January 2016, as a result of a settlement with Ally Financial Inc. and Ally Bank, the DOJ and the Bureau, a settlement administrator mailed $80 million plus accrued interest in checks to consumers harmed by discriminatory auto loan pricing policies.

While our settlement administration and mortgage and auto work continue to be priorities for our office, we have made significant strides in expanding our efforts to help consumers in other priority markets. These priority markets include the credit card market, where we continue to engage in both supervisory and enforcement work related to fair lending risks in that market.

Notably, we also added small business lending to our priorities to address fair lending risks in that market. Small businesses are a backbone of our nation's economy and access to credit is critical to their operation and growth. Unlike large businesses, many small businesses are sole proprietorships where the owner's personal credit—and potentially that of family and friends—may be on the line.[5] With so much at stake, and in light of the heightened fair lending risk acknowledged by the enactment of Section 1071 of the Dodd-Frank Act, we will continue to focus on small business lending in our Fair Lending work going forward. In addition, the Bureau's rulemaking required by the Dodd-Frank Act's small business data collection provision[6] is now in the pre-rule stage.[7] We look forward to developing additional subject-matter expertise in this market as we engage in dialogue with stakeholders, including industry, consumer advocates, and other market experts, conduct further examinations, and gather additional data and information in connection with the rulemaking.

The Bureau also published its final rule implementing Dodd-Frank's amendments to HMDA's Regulation C. HMDA data are integral to the everyday work of our office and others within the Bureau. One of HMDA's primary purposes is identifying potential discrimination, and many other stakeholders will benefit from improved data, including other agencies, the public, consumer groups, researchers, and industry itself. The final rule reflects our practical experience working with the data, as well as hundreds of comments from industry, consumer advocates, civil rights groups, and other stakeholders. These changes will undoubtedly enhance our work as we are able to analyze and act on this more robust information.

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[2] Dodd-Frank Act, section 1013(c)(2)(A), Public Law 111–203, 124 Stat. 1376 (2010) (codified at 12 U.S.C. 5493(c)(2)(A)).

[3] 15 U.S.C. 1691 *et seq.*

[4] 12 U.S.C. 2801 *et seq.*

[5] *See* Office of Advocacy, Small Business Administration, Frequently Asked Questions (March 2014), *available at https://www.sba.gov/sites/default/files/advocacy/FAQ_March_2014_0.pdf* (according to the Small Business Administration, approximately 72.1% of all businesses are sole proprietorships).

[6] Dodd-Frank Act, section 1071(a) (codified at 15 U.S.C. 1691c–2(a)).

[7] 80 FR 78055, 78058 (Dec. 15, 2015).

The Dodd-Frank Act mandated the creation of the CFPB's Office of Fair Lending and Equal Opportunity and charged it with ensuring fair, equitable, and nondiscriminatory access to credit to consumers; coordinating our fair lending efforts with Federal and State agencies and regulators; working with private industry, fair lending, civil rights, consumer and community advocates to promote fair lending compliance and education; and annually reporting to Congress on our efforts.

I am proud to say that the Office continues to fulfill our Dodd-Frank mandate and looks forward to continuing to work together with all stakeholders in protecting America's consumers. To that end, I am excited to share our progress with this, our fourth, Fair Lending Report.[8]

Sincerely,

Patrice Alexander Ficklin

Executive Summary

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank or Dodd-Frank Act)[9] established the Bureau as the Nation's first federal agency with a mission focused solely on consumer financial protection and making consumer financial markets work for all Americans. Dodd-Frank established the Office of Fair Lending and Equal Opportunity within the CFPB, and charged it with "providing oversight and enforcement of Federal laws intended to ensure the fair, equitable, and nondiscriminatory access to credit for both individuals and communities."[10]

The Bureau and the Office of Fair Lending and Equal Opportunity (the Office of Fair Lending) have taken important strides over the last year in our efforts to protect consumers from credit discrimination and broaden access to credit, as we identify new and emerging fair lending risks and monitor institutions for compliance. In 2015, our fair lending supervisory and public enforcement actions directed institutions to provide approximately $108 million in remediation and other monetary payments.[11]

- Supervision and enforcement priorities and activity. The Bureau's risk-based prioritization process allows the Office of Fair Lending to focus our supervisory and enforcement efforts on markets or products that represent the greatest risk for consumers.
  - Mortgage lending. Mortgage lending continues to be a key priority for the Office of Fair Lending for both supervision and enforcement, with a focus on HMDA data integrity and potential fair lending risks in the areas of redlining, underwriting, and pricing. In 2015, the Bureau resolved two public enforcement actions involving mortgage lending. Through 2015, our mortgage origination work has covered institutions responsible for close to half of the transactions reported pursuant to HMDA (and more than 60% of the transactions reported by institutions subject to the CFPB's supervision and enforcement authority).[12] Moreover, our supervisory work on mortgage servicing has included use of the ECOA Baseline Review Modules, which help us to identify potential fair lending risk in mortgage servicing and inform our prioritization of mortgage servicers.
  - Indirect auto lending. In 2015, the Bureau continued its work in overseeing and enforcing compliance with ECOA in indirect auto lending through both supervisory and enforcement activity, including monitoring compliance with our previous supervisory and enforcement actions. Our auto finance targeted ECOA reviews[13] generally have included an examination of three areas: Credit approvals and denials, interest rates quoted by the lender to the dealer (the "buy rates"), and any discretionary markup or adjustments to the buy rate. In 2015, the Bureau resolved two public enforcement actions involving discriminatory pricing and compensation structures in indirect auto lending. Our indirect auto work has covered more than 60% of the auto loan market share by volume.[14]
  - Credit cards. The Bureau also continued fair lending supervisory and enforcement work in the credit card market. We have focused in particular on the quality of fair lending compliance management systems and on fair lending risks in underwriting, line assignment, and servicing, including the treatment of consumers residing in Puerto Rico or who indicate that they prefer to speak in Spanish. Our work in this highly-concentrated market has covered institutions responsible for more than 75% of outstanding credit card balances in the United States.[15]
  - Other product areas. The Bureau has focused supervision and enforcement work in other markets as well. For example, this year we began targeted ECOA reviews of small-business lending, focusing in particular on the quality of fair lending compliance management systems and on fair lending risks in underwriting, pricing, and redlining. We remain committed to assessing and evaluating fair lending risk in all credit markets under the Bureau's jurisdiction.
- Rulemaking. In October 2015, the Bureau published a final rule to amend Regulation C, the regulation that implements HMDA, to require covered lenders to report additional data elements, among other changes.[16] In January 2016, in response to ongoing conversations with industry about compliance with Regulation C, the Bureau published a Request for Information (RFI) on the Bureau's HMDA data resubmission guidelines.[17]
- Guidance. In May 2015, the Bureau issued a compliance bulletin on the Section 8 Housing Choice Voucher (HCV) Homeownership Program.[18] The Bulletin reminds creditors of their obligations under ECOA[19] and its implementing regulation, Regulation B,[20] to provide non-discriminatory access to credit for mortgage applicants by considering income from the Section

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[8] *See* Dodd-Frank Act section 1013(c)(2)(D) (codified at 12 U.S.C. 5493(c)(2)(D)).

[9] Public Law 111–203, 124 Stat. 1376 (2010).

[10] Dodd-Frank Act, section 1013(c)(2)(A) (codified at 12 U.S.C. 5493(c)(2)(A)).

[11] Figures represent estimates of monetary relief for consumers ordered by the Bureau as a result of supervisory or enforcement actions on solely fair lending matters in 2015, as well as other monetary payments such as loan subsidies, increased consumer financial education, and civil money penalties. The Bureau also ordered institutions to provide non-monetary relief to consumers.

[12] CFPB analysis of HMDA data for 2015.

[13] ECOA targeted reviews focus on a specific line of business, such as mortgages, credit cards, or auto finance and typically include statistical analysis and, in some cases, loan file reviews in order to evaluate an institution's compliance with ECOA and Regulation B within the specific business line selected.

[14] CFPB analysis of 2015 AutoCount data from Experian Automotive.

[15] CFPB analysis of 3Q 2015 call reports.

[16] *See* Home Mortgage Disclosure Act (Regulation C), 80 FR 66128 (Oct. 28, 2015) (codified at 12 U.S.C. 1003 *et. seq.*), *available at https://www.gpo.gov/fdsys/pkg/FR-2015-10-28/pdf/2015-26607.pdf*.

[17] Consumer Financial Protection Bureau, Request for Information Regarding Home Mortgage Disclosure Act Resubmission Guidelines 2015–0058 (Jan. 12, 2016), *available at http://files.consumerfinance.gov/f/201601_cfpb_request-for-information-regarding-home-mortgage-disclosure-act-resubmission.pdf*.

[18] Consumer Financial Protection Bureau, Section 8 Housing Choice Voucher Homeownership Program Bulletin 2015–02 (May 11, 2015), *available at http://files.consumerfinance.gov/f/201505_cfpb_bulletin-section-8-housing-choice-voucher-homeownership-program.pdf*.

[19] 15 U.S.C. 1691 *et seq.*

[20] 12 CFR 1002 *et seq.*

8 HCV Homeownership Program. In addition, throughout the year, the Office of Fair Lending provided guidance and information on market trends through *Supervisory Highlights*.

- Outreach to industry, advocates, consumers, and other stakeholders. The Bureau continues to initiate and encourage industry and consumer engagement opportunities to discuss fair lending compliance and access to credit issues, including through speeches, presentations, blog posts, webinars, rulemaking, public comments, and communication with Members of Congress.
- Interagency coordination and collaboration. The Bureau continues to coordinate with the Federal Financial Institutions Examination Council (FFIEC) agencies,[21] as well as the Department of Justice (DOJ), the Federal Trade Commission (FTC), and the Department of Housing and Urban Development (HUD), as we each play a role in enforcing our nation's fair lending laws and regulations. In 2015, the Office of Fair Lending entered into a Memorandum of Understanding with HUD to formalize information-sharing between our agencies and maximize opportunities for joint investigations, when possible.

This report generally covers the Bureau's fair lending work during calendar year 2015.

1. Fair Lending Prioritization

1.1 Risk-Based Prioritization: A Data-Driven Approach To Prioritizing Areas of Potential Fair Lending Harm to Consumers

To use the CFPB's fair lending research, supervision, and enforcement resources most efficiently and effectively, the Office of Fair Lending, working with other offices in the Bureau, developed a fair lending risk-based prioritization approach that assesses and determines how best to address areas of potential fair lending harm to consumers in the entities, products, and markets under our jurisdiction.

The Bureau considers both qualitative and quantitative information at the institution, product, and market levels to determine where potential fair lending harm to consumers may be occurring. This information includes: Consumer complaints; tips from advocacy groups, whistleblowers, and government agencies; supervisory and enforcement history; quality of lenders' compliance management systems; results from data analysis; and market insights. The Office of Fair Lending integrates all of this information into the fair lending risk-based prioritization process, which is incorporated into the Bureau's larger risk-based prioritization process, allowing the Bureau to efficiently allocate its fair lending resources to areas of greatest risk to consumers. We then coordinate with other regulators so that our focus and efforts may inform their work and vice versa.

1.1.1 Complaints and Tips

The CFPB uses input from a variety of external and internal stakeholders to inform its fair lending prioritization process. We consider fair lending complaints handled by the Bureau's Office of Consumer Response and tips brought to the Office of Fair Lending's attention by advocacy groups, whistleblowers, and other government agencies (at the local, state, and federal levels). As part of the prioritization process the Office of Fair Lending also considers public and private fair lending litigation.

1.1.2 Supervisory and Enforcement History

The Bureau considers information gathered from prior fair lending work of the Bureau and other regulators, including any supervisory or enforcement actions. At the institution level, the Bureau considers results from past reviews, including information the Bureau has gathered about the fair lending risk(s) presented by a lender's policies, procedures, practices, or business model; the extent and nature of any violations previously cited; and the institution's remediation efforts. Additionally, the Bureau considers self-identified issues and whether the institution took appropriate corrective action when it identified those issues. We also closely monitor institutions' compliance with orders arising from previous enforcement actions. Finally, we coordinate with other regulators to share and consider the results of our respective fair lending efforts.[22]

1.1.3 Quality of Compliance Management Systems

One critical piece of information the Bureau obtains through our supervisory work is the quality of an institution's fair lending compliance management system, which is a key factor considered in the fair lending prioritization process. The Bureau has previously identified common features of a well-developed fair lending compliance management system,[23] though we recognize that the appropriate scope of an institution's fair lending compliance management system will vary based on its size, complexity, and risk profile.

Many CFPB-supervised institutions face similar fair lending risks, but they may differ in how they manage those risks, based on their size, complexity, and risk profile. A key consideration is that, the lower the quality of an institution's fair lending compliance management system, the less likely that the institution will identify and effectively address fair lending risks. As a result, a lower quality fair lending compliance management system generally indicates a higher fair lending risk to consumers.

1.1.4 Data Analysis

The Bureau's fair lending prioritization process is also driven by quantitative data analysis that evaluates developments and trends at the institution and market levels. For example, in the housing finance marketplace, HMDA data allow regulators to assess a specific institution's risk as well as risk across the market in order to identify those institutions or segments that appear to present heightened fair lending risk to consumers. Such analyses can be particularly useful in identifying those lenders that appear to deviate significantly from their peers in, for example, the extent to which they provide access to credit in communities of color.

1.1.5 Market Insights

The Office of Fair Lending works closely with all of the Bureau's markets offices, which monitor consumer financial markets to identify emerging developments and trends. These offices monitor key consumer financial products and services, including mortgages, credit cards, auto lending, consumer reporting, installment lending, student lending, and payday lending. The Bureau uses market intelligence and the trends identified by our markets offices to provide insight into the markets we oversee and to identify fair lending risks in a given market that may require further study or attention. For example, our work with the Office of Installment Lending and Collections Markets has assisted in our understanding of indirect auto lenders' business models and pricing policies. Information on fair lending risks in a market is then incorporated into our risk-based prioritization process to determine the level of attention needed in a market and our focus within that market.

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[21] The FFIEC member agencies are the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), and the Consumer Financial Protection Bureau (CFPB). The State Liaison Committee was added to FFIEC in 2006 as a voting member.

[22] Other regulators may take into account the Bureau's fair lending findings in their evaluations of lender compliance with the Fair Housing Act, performance under the Community Reinvestment Act, or in conjunction with the review of merger/acquisition applications and other similar applications.

[23] *See Fair Lending Report of the Consumer Financial Protection Bureau* 13-14 (Apr. 2014), *available at http://files.consumerfinance.gov/f/201404_cfpb_report_fair-lending.pdf.*

Based on our evaluation of the information and data gathered from the sources above, this year we identified mortgage lending (including both origination and servicing), auto finance, and credit cards as priority markets for our fair lending supervision and enforcement work. We also identified small business lending as a priority market in connection with the Bureau's exploration of the issues that will need to be addressed in the rulemaking required under Section 1071 of the Dodd-Frank Act, which amended ECOA to require financial institutions to collect and report data on lending to women-owned, minority-owned, and small businesses.[24] We remain committed to assessing and evaluating fair lending risk in all credit markets under the Bureau's authority.

1.1.6 *Addressing Areas of Potential Fair Lending Harm*

Once fair lending risks are identified and prioritized through our risk-based prioritization process, the Office of Fair Lending considers, as part of its strategic planning process, how best to address those risks and which resources to dispatch to address the risks.

The Bureau's fair lending risk-based prioritization is an ongoing rather than a static process. Even after priorities are identified and steps are taken to effectuate those priorities, we continue to receive and consider information relevant to prioritization. At an institution level, such information may include new whistleblower tips and leads; additional risks identified in ongoing supervisory and enforcement activities; and compliance issues identified and brought to our attention by institutions themselves.

The Office of Fair Lending considers a number of factors in determining how best to address this new information. Such factors may include the nature and extent of the fair lending risk; the degree of consumer harm involved; whether the risk appears to be isolated or widespread within a market; whether the risk was self-identified and/or self-disclosed to the Bureau; and the nature and extent of an institution's remediation plans. Based on these and other factors, the Office of Fair Lending may decide to initiate supervisory or enforcement activity, conduct additional research or ongoing monitoring of particular issues or institutions, issue guidance, leverage outreach events, or engage in other activity within the Bureau's authority. Fair Lending takes account of responsible conduct as set forth in CFPB Bulletin 2013–06, Responsible Business Conduct: Self-Policing, Self-Reporting, Remediation, and Cooperation.[25]

2. *Fair Lending Supervision*

The CFPB's Fair Lending Supervision program assesses compliance with Federal consumer financial laws and regulations at banks and nonbanks over which the Bureau has supervisory authority. Supervision activities range from assessments of institutions' fair lending compliance management systems to in-depth reviews of products or activities that may pose heightened fair lending risks to consumers. As part of its Fair Lending Supervision program, the Bureau continues to conduct three types of fair lending reviews at Bureau-supervised institutions: ECOA baseline reviews, ECOA targeted reviews, and HMDA data integrity reviews. Our supervisory work has focused in the priority areas of mortgage, auto lending, credit cards, and small business lending.

When the CFPB identifies situations in which fair lending compliance is inadequate, it directs institutions to establish fair lending compliance programs commensurate with the size and complexity of the institution and its lines of business. When fair lending violations have been identified, the CFPB may direct institutions to provide remediation and restitution to consumers, and may pursue other appropriate relief. The CFPB also refers a matter to the Justice Department when it has reason to believe that a creditor has engaged in a pattern or practice of lending discrimination in violation of ECOA.[26] The CFPB may also refer other potential ECOA violations to the Justice Department.

2.1 *Fair Lending Supervisory Observations*

Although the Bureau's supervisory process is confidential, the Bureau publishes regular reports called *Supervisory Highlights,* which provide information on supervisory trends the Bureau observes without identifying specific entities. The Bureau may also draw on its supervisory experience to publish compliance bulletins in order to remind the institutions that we supervise of their legal obligations. Industry participants can use this information to inform and assist in complying with ECOA and HMDA. Throughout the year, the Office of Fair Lending, in coordination with other offices within the Division of Supervision, Enforcement and Fair Lending, engages in outreach to provide information on trends from the Bureau's supervisory experience as it relates to fair lending risk.

2.1.1 *Adverse Action Notice Deficiencies*

Regulation B requires a creditor to notify an applicant of an adverse action on the application taken within 30 days after receiving a completed application.[27] The notice must be in writing and contain a statement of the action taken; the name and address of the creditor; a statement describing the provisions of section 701(a) of ECOA; the name and address of the Federal agency that administers compliance with respect to the creditor; and either a statement of the specific reasons for the action taken, or a disclosure of the applicant's right to a statement of specific reasons within 30 days, if the statement is requested within 60 days of the creditor's notification.[28]

In the Winter 2015 edition of *Supervisory Highlights,* the Office of Fair Lending described supervisory observations of instances in which supervised entities failed to provide the requisite information in denial notices as set forth in Regulation B and failed to notify an applicant of action taken within 30 days after receiving the completed application.[29] These errors were attributed to weaknesses in the compliance audit programs and the monitoring and corrective action component of the compliance programs.[30] In instances where these violations have been observed, the Bureau has directed the supervised entities to conduct a review of all mortgage loan applications denied within the relevant time period and take appropriate corrective action, including providing corrected notices to applicants.[31]

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[24] Dodd-Frank Act section 1071(a) (codified at 15 U.S.C. 1691c–2(a)).

[25] Consumer Financial Protection Bureau, Responsible Business Conduct: Self-Policing, Self-Reporting, Remediation, and Cooperation 2013–06 (June 25, 2013), *available at http://files.consumerfinance.gov/f/201306_cfpb_bulletin_responsible-conduct.pdf.*

[26] 15 U.S.C. 1691e(g).

[27] 12 CFR 1002.9(a)(1)(i).

[28] 15 U.S.C. 1691 *et seq.;* 12 CFR 1002.9(a)(2).

[29] Consumer Financial Protection Bureau, *Supervisory Highlights* Winter 2015 at 12 (March 11, 2015), *available at http://files.consumerfinance.gov/f/201503_cfpb_supervisory-highlights-winter-2015.pdf.*

2.1.2 Consideration of Protected Forms of Income

In 2015, the Bureau published guidance in *Supervisory Highlights* and in a compliance bulletin to remind industry stakeholders and consumers of ECOA and Regulation B provisions regarding consideration of protected sources of income. ECOA forbids a creditor from discriminating against any applicant "because all or part of the applicant's income derives from any public assistance program." [32] Regulation B states that a creditor "shall not . . . exclude from consideration the income of an applicant . . . because of a prohibited basis or because the income is derived from part-time employment or is an annuity, pension, or other retirement benefit . . . ." [33] Regulation B also states that a "creditor shall not make any . . . written statement, in advertising or otherwise, to applicants or prospective applicants that would discourage on a prohibited basis a reasonable person from making or pursuing an application." [34]

The Winter 2015 edition of *Supervisory Highlights* discussed supervisory observations during recent examinations of instances in which Bureau examination staff found one or more violations of ECOA and Regulation B related to the treatment of protected sources of income.[35] Applicants were automatically declined if they sought to rely on income from a non-employment source, such as Social Security income or retirement benefits, in order to repay the loan. Marketing materials contained written statements regarding the prohibition and may have discouraged applicants who received public assistance or other protected sources of income from applying for credit.

While the general rules governing the prohibition against consideration of protected sources of income include narrow exceptions (*e.g.,* while a creditor may not consider the fact that an applicant receives public assistance income, the creditor can consider "[t]he length of time an applicant will likely remain eligible to receive such income" [36]), for these exceptions to apply, an institution must analyze each applicant's particular situation.[37] A blanket practice of denying any applicant who relies on public assistance income, or a specific form of public assistance income, without an assessment of an applicant's particular situation, may violate ECOA and Regulation B.

The relevant supervised entities were directed by examination staff to identify mortgage applicants who were wrongly denied on the basis of their protected income source, as well as prospective applicants who were discouraged by the marketing materials. Supervision also directed that remediation be made to harmed applicants and prospective applicants, including reimbursement of fees and interest; the opportunity to reapply; and additional remuneration for any consumers who were improperly denied and subsequently lost their homes.

The Winter 2015 edition of *Supervisory Highlights* [38] also emphasized guidance issued in the Bureau's November 18, 2014, bulletin on avoiding prohibited discrimination against consumers receiving Social Security disability income.[39] The bulletin reminded lenders that requiring unnecessary documentation from consumers who receive Social Security disability income raises fair lending concerns, and called attention to standards and guidelines that may help lenders comply with the law.

2.1.3 Consideration of Protected Forms of Income: Section 8 Housing Choice Voucher Homeownership Program

The Summer 2015 edition of *Supervisory Highlights* [40] and the CFPB bulletin issued on May 11, 2015, provide guidance to help lenders avoid prohibited discrimination against consumers receiving public assistance income.[41] Specifically, the bulletin reminds creditors of their obligations under ECOA and Regulation B to provide non-discriminatory access to credit for mortgage applicants by considering income from the Section 8 Housing Choice Voucher (HCV) Homeownership Program.

The Section 8 HCV Homeownership Program was created to assist low-income, first-time homebuyers in purchasing homes. The program is a component of the Department of Housing and Urban Development's (HUD) broader Section 8 Housing Choice Voucher Program, which also includes a rental assistance program.[42] These programs are funded by HUD and administered by participating local Public Housing Authorities (PHAs). Through the Section 8 HCV Homeownership Program, the participating PHA may provide an eligible consumer with a monthly housing assistance payment to help pay for homeownership expenses associated with a housing unit purchased in accordance with HUD's regulations.[43] In addition to HUD's regulations, the PHAs may also adopt additional requirements, including lender qualifications or terms of financing.[44]

As stated above, ECOA and Regulation B prohibit creditors from discriminating in any aspect of a credit transaction against an applicant "because all or part of the applicant's income derives from any public assistance program.”[45] “Any Federal, state, or local governmental assistance program that provides a continuing, periodic income supplement, whether premised on entitlement or need, is ‘public assistance’ for purposes of the regulation. The term includes (but is not limited to) . . . mortgage supplement or assistance programs . . . .”[46] As such, mortgage assistance provided under the Section 8 HCV Homeownership Program is income derived from a public assistance program under ECOA and Regulation B.

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[30] *Id.*

[31] *Id.*

[32] 15 U.S.C. 1691(a)(2).

[33] 12 CFR 1002.6(b)(5). Regulation B also states that "[w]hen an applicant relies on alimony, child support, or separate maintenance payments in applying for credit, the creditor shall consider such payments as income to the extent that they are likely to be consistently made." *Id.*

[34] *Id.* at § 1002.4(b).

[35] Consumer Financial Protection Bureau, *Supervisory Highlights* Winter 2015 at 13 (March 11, 2015), *available at http://files.consumerfinance.gov/f/201503_cfpb_supervisory-highlights-winter-2015.pdf.*

[36] *See* Official Interpretations, 12 CFR 1002, ¶ 6(b)(2)–6 (Supp. I).

[37] *See id.* ("When considering income derived from a public assistance program, a creditor may take into account, for example: i. The length of time an applicant will likely remain eligible to receive such income. ii. Whether the applicant will continue to qualify for benefits based on the status of the applicant's dependents (as in the case of Temporary Aid to Needy Families, or social security payments to a minor).").

[38] Consumer Financial Protection Bureau, *Supervisory Highlights* Winter 2015 at 18 (March 11, 2015), *available at http://files.consumerfinance.gov/f/201503_cfpb_supervisory-highlights-winter-2015.pdf.*

[39] *See* Consumer Financial Protection Bureau, Social Security Disability Income Verification Bulletin 2014–03 (November 18, 2014), *available at http://files.consumerfinance.gov/f/201411_cfpb_bulletin_disability-income.pdf.*

[40] Consumer Financial Protection Bureau, *Supervisory Highlights* Summer 2015 at 20 (June 23, 2015), *available at http://files.consumerfinance.gov/f/201506_cfpb_supervisory-highlights.pdf.*

[41] Consumer Financial Protection Bureau, Section 8 Housing Choice Voucher Homeownership Program Bulletin 2015–02 (May 11, 2015), *available at http://files.consumerfinance.gov/f/201505_cfpb_bulletin-section-8-housing-choice-voucher-homeownership-program.pdf.*

[42] "Section 8 Housing Choice Voucher Homeownership Program" refers to the homeownership assistance program authorized by the Quality Housing & Work Responsibility Act of 1998 (Pub. L. 105–276, approved October 21, 1998; 112 Stat. 2461), and the applicable implementing regulations, 24 CFR 982.625–982.643. The program is also referred to as the Voucher Homeownership Program, the Housing Choice Voucher Homeownership Option, or the Section 8 Homeownership Program.

[43] 24 CFR 982.625(c).

[44] *Id.* at § 982.632(a).

Regulation B further provides that “[i]n a judgmental system of evaluating creditworthiness, a creditor may consider . . . whether an applicant’s income derives from any public assistance program only for the purpose of determining a pertinent element of creditworthiness.”[47] However, “[i]n considering the separate components of an applicant’s income, the creditor may not automatically discount or exclude from consideration any protected income. Any discounting or exclusion must be based on the applicant’s actual circumstances.”[48] Accordingly, a blanket practice of excluding or refusing to consider Section 8 HCV Homeownership Program vouchers as a source of income or accepting the vouchers only for certain mortgage loan products or delivery channels, without an assessment of an applicant’s particular situation, may violate ECOA and Regulation B.

Through the supervisory process, the Bureau has become aware of one or more institutions excluding or refusing to consider income derived from the Section 8 HCV Homeownership Program during the mortgage loan application and underwriting process. Some institutions have restricted the use of Section 8 HCV Homeownership Program vouchers to only certain home mortgage loan products or delivery channels. Supervision has required one or more institutions to update their policies and procedures to ensure that their practices concerning Section 8 HCV Homeownership Program vouchers comply with ECOA and its implementing regulation, Regulation B. In addition, Supervision has required one or more institutions to identify borrowers who, due to their reliance on Section 8 HCV Homeownership Program vouchers, were either denied loans, or discouraged from applying; and to provide those borrowers with financial remuneration and an opportunity to reapply.

2.1.4 Underwriting Disparity Findings and Remedial Actions

The Fall 2015 edition of *Supervisory Highlights* detailed the Bureau’s supervisory work on ECOA targeted reviews that analyze an institution’s underwriting practices. It describes the Bureau’s supervisory underwriting reviews, methodologies used to understand underwriting outcomes and identify potential disparities, file selection methods, and guidance to institutions on managing fair lending risks in underwriting.[49]

CFPB examination teams conduct targeted ECOA reviews to evaluate areas of heightened fair lending risk. These reviews generally focus on a specific line of business, such as mortgages, credit cards, automobile finance or small business lending. Our underwriting reviews typically include a statistical analysis, and in some cases a loan file review, that assess an institution’s compliance with ECOA and its implementing regulation, Regulation B, within the specific business line selected.

In each examination where a file review is conducted, the review is tailored to the specific heightened areas of risk that have previously been identified. If the examiners identify examples of files that may provide evidence of discrimination, they share the files with the institution to obtain the institution’s explanation. If, following the statistical analysis and the file review, the examination team believes that there may be a violation of ECOA, the CFPB may share the findings with the institution in a Potential Action and Request for Response for Fair Lending letter (detailed below).

We noted that CFPB examination teams have conducted numerous examinations to determine whether statistical disparities in underwriting outcomes attributable to race, national origin, or some other prohibited basis characteristic constituted a violation of ECOA. Many of these examinations have concluded without findings of discrimination. In one or more examinations, however, examiners concluded that the disparities resulted from illegal discrimination in violation of ECOA.

When examiners identify underwriting disparities that violate ECOA, the Bureau will require the institution to pay remuneration to affected borrowers, which may include application or other fees, costs, and other damages. Institutions also may be required to re-offer credit. In addition, institutions must identify and address any underlying compliance management system (CMS) weaknesses that led to the violations.

2.2 Potential Action and Request for Response for Fair Lending (PARR–FL) Letters

In the event that the Bureau is considering formal action, the Bureau may send a Potential Action and Request for Response for Fair Lending (PARR–FL) letter to the institution.[50] As part of the examination process, the Bureau sends a PARR–FL letter to provide the entity notice of preliminary findings of violation(s) of Federal consumer financial law. The PARR–FL letter also notifies the entity that the Bureau is considering taking supervisory action, such as a non-public memorandum of understanding, or a public enforcement action, based on the potential violations identified and described in the letter. If there is a potential ECOA violation that could be referred to the DOJ, the PARR–FL letter provides the entity notice of the potential for a referral.

Generally, a PARR–FL letter will:

- Identify the laws that the Bureau has preliminarily identified may have been violated and describe the possible illegal conduct;
- Generally describe the types of relief available to the Bureau;
- Inform the relevant institution of its opportunity to submit a written response presenting its positions regarding relevant legal and policy issues, as well as facts through affidavits or declarations;
- Describe the manner and form by which the institution should respond, if it chooses to do so, and provide a submission deadline, generally 14 calendar days, for timely consideration;
- Inform the relevant institution that the Bureau is considering recommending corrective action; and
- When appropriate, inform the relevant institution that the Office of Fair Lending is considering recommending that the Bureau refer the institution to the DOJ.

Typically, when a PARR–FL letter results from supervisory activity, the

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[45] 15 U.S.C. 1691(a)(2); 12 CFR 1002.2(z), 1002.4(a).

[46] Official Interpretations, 12 CFR 1002.2, ¶ 2(z)–3 (Supp. I).

[47] 12 CFR 1002.6(b)(2)(iii).

[48] Official Interpretations, 12 CFR 1002.6 ¶ 6(b)(5)–3(ii) (Supp. I).

[49] Consumer Financial Protection Bureau, *Supervisory Highlights* Fall 2015 at 27 (November 3, 2015), *available at http://files.consumerfinance.gov/f/201510_cfpb_supervisory-highlights.pdf.*

[50] A recent issue of *Supervisory Highlights* described non-Fair Lending PARR letters and the ARC process. *See* Consumer Financial Protection Bureau, *Supervisory Highlights* Summer 2015 at 27 (June 23, 2015), *available at http://files.consumerfinance.gov/f/201506_cfpb_supervisory-highlights.pdf.*

Bureau will send the PARR–FL letter prior to finalizing the examination report or supervisory letter. The Bureau carefully considers the institution's response before reaching a final decision about whether to cite an ECOA violation, what corrective action to take, and, as appropriate, whether to refer the matter to the DOJ. Depending on the response, the Bureau may determine that there is no violation of law, and that, therefore, neither corrective action nor a referral is appropriate. If the Bureau finds a violation, the examination report or supervisory letter will convey the final findings to the institution, the Bureau will seek appropriate corrective action, and the Bureau will inform the institution of any referral of the matter to the DOJ.

2.3 ECOA Baseline Modules Update

On October 30, 2015, the CFPB published an update to the ECOA Baseline Review Modules, which are part of the CFPB Supervision and Examination Manual. Examination teams use the ECOA Baseline Review Modules to conduct ECOA Baseline Reviews, which evaluate how well institutions' compliance management systems identify and manage fair lending risks. The revised Baseline Review modules better align in content and organization with the CFPB's examination procedures for CMS. The revised modules are consistent with the FFIEC Interagency Fair Lending Examination Procedures and organized by fair lending risk areas, such as origination and servicing. In addition, the fifth module, "Fair Lending Risks Related to Models," is a new module that examiners will use to review empirical models that supervised financial institutions may use.

When using the modules to conduct an ECOA Baseline Review, CFPB examination teams review an institution's fair lending supervisory history, including any history of fair lending risks or violations previously identified by the CFPB or any other federal or state regulator. Examination teams collect and evaluate information about an entity's fair lending compliance program, including board of director and management participation, policies and procedures, training materials, internal controls and monitoring and corrective action. In addition to responses obtained pursuant to information requests, examination teams may also review other sources of information, including any publicly-available information about the entity as well as information obtained through interviews with an institution's staff or supervisory meetings with an institution. Examiners may complete one or more modules as part of a broader review of compliance within an institution product line. For example, in order to evaluate fair lending risks related to mortgage servicing, examination teams may use Module IV, Fair Lending Risks Related to Servicing. This module includes questions on such topics as servicing consumers with Limited English Proficiency and policies and procedures related to the offering of hardship and/or loss mitigation options.

The updated ECOA Baseline Review Modules and the CFPB Supervision and Examination Manual can be found on the Bureau's Web site at *www.consumerfinance.gov.*

3. Fair Lending Enforcement

The Bureau conducts investigations of potential violations of HMDA and ECOA, and if it believes a violation has occurred, can file a complaint either through its administrative enforcement process or in federal court. Like the other federal bank regulators, the Bureau refers matters to the DOJ when it has reason to believe that a creditor has engaged in a pattern or practice of lending discrimination.[51] However, when the Bureau makes a referral to the DOJ, the Bureau can still take its own independent action to address a violation. In 2015, the Bureau announced four fair lending enforcement actions, in mortgage origination and indirect auto lending. The Bureau also has a number of ongoing fair lending investigations and has authority to settle or sue in a number of matters.

3.1 Fair Lending Public Enforcement Actions

3.1.1 Mortgage

Hudson City Savings Bank

On September 24, 2015, the CFPB and the DOJ filed a joint complaint against Hudson City Savings Bank (Hudson City) alleging discriminatory redlining practices in mortgage lending and a proposed consent order to resolve the complaint.[52] The complaint alleges that from at least 2009 to 2013 Hudson City illegally redlined by providing unequal access to credit to neighborhoods in New York, New Jersey, Connecticut, and Pennsylvania. Specifically, Hudson City structured its business to avoid and thereby discourage residents in majority-Black-and-Hispanic neighborhoods from accessing mortgages. The consent order requires Hudson City to pay $25 million in direct loan subsidies to qualified borrowers in the affected communities, $2.25 million in community programs and outreach, and a $5.5 million penalty. This represents the largest redlining settlement in history as measured by such direct subsidies. On October 30, 2015, Hudson City was acquired by M&T Bank Corporation, and Hudson City was merged into Manufacturers Banking and Trust Company (M&T Bank), with M&T Bank as the surviving institution. As the successor to Hudson City, M&T Bank is responsible for carrying out the terms of the Consent Order.

Hudson City was a federally-chartered savings association with 135 branches and assets of $35.4 billion and focused its lending on the origination and purchase of mortgage loans secured by single-family properties. According to the complaint, Hudson City illegally avoided and thereby discouraged consumers in majority-Black-and-Hispanic neighborhoods from applying for credit by:

- Placing branches and loan officers principally outside of majority-Black-and-Hispanic communities;
- Selecting mortgage brokers that were mostly located outside of, and did not effectively serve, majority-Black-and-Hispanic communities;
- Focusing its limited marketing in neighborhoods with relatively few Black and Hispanic residents; and
- Excluding majority-Black-and-Hispanic neighborhoods from its credit assessment areas.

The consent order, which was entered by the court on November 4, 2015,[53] requires Hudson City to pay $25 million to a loan subsidy program that will offer residents in majority-Black-and-Hispanic neighborhoods in New Jersey, New York, Connecticut, and Pennsylvania mortgage loans on a more affordable basis than otherwise available from Hudson City; spend $1 million on targeted advertising and outreach to generate applications for mortgage loans from qualified residents in the affected majority-Black-and-Hispanic neighborhoods; spend $750,000 on local partnerships with community-based or governmental organizations that provide assistance to residents in majority-Black-and-Hispanic neighborhoods; and spend $500,000 on consumer education, including credit counseling and financial literacy. In addition to the monetary requirements, the decree orders Hudson City to open two full-service branches in majority-Black-and-Hispanic communities, expand its assessment areas to include majority-Black-and-Hispanic communities, assess the credit needs of majority-Black-and-Hispanic communities, and develop a fair lending compliance and training program.

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[51] 15 U.S.C. 1691e(g).

[52] *Consumer Financial Protection Bureau* v. *Hudson City Savings Bank, F.S.B.,* No. 2:15–cv–07056–CCC–JBC (D.N.J. Sept. 24, 2015) (complaint), *available at http://files.consumerfinance.gov/f/201509_cfpb_hudson-city-joint-complaint.pdf.*

[53] *Consumer Financial Protection Bureau* v. *Hudson City Savings Bank, F.S.B.,* No. 2:15–cv–07056–CCC–JBC (D.N.J. Sept. 24, 2015) (consent order), *available at http://files.consumerfinance.gov/f/201511_cfpb_hudson-city-consent-order.pdf.*

Provident Funding Associates

On May 28, 2015, the CFPB and the DOJ filed a joint complaint against Provident Funding Associates (Provident) alleging discrimination in mortgage lending, along with a proposed order to settle the complaint.[54] The complaint alleges that from 2006 to 2011, Provident discriminated in violation of ECOA by charging over 14,000 African-American and Hispanic borrowers more in brokers' fees than similarly-situated non-Hispanic White borrowers on the basis of race and national origin. Provident is required under the order to pay $9 million in damages to harmed African-American and Hispanic borrowers.

Provident is headquartered in California and originates mortgage loans through its nationwide network of brokers. Between 2006 and 2011, Provident made over 450,000 mortgage loans through its brokers. During this time period, Provident's practice was to set a risk-based interest rate and then allow brokers to charge a higher rate to consumers. Provident would then pay the brokers some of the increased interest revenue from the higher rates—these payments are also known as yield spread premiums. Provident's mortgage brokers also had discretion to charge borrowers higher fees. The fees paid to Provident's brokers were thus made up of these two components: Payments by Provident from increased interest revenue and through the direct fees paid by the borrower.

The CFPB and the DOJ alleged that Provident violated ECOA by charging African-American and Hispanic borrowers more in total broker fees than non-Hispanic White borrowers based on their race and national origin and not based on their credit risk. The DOJ also alleged that Provident violated the Fair Housing Act, which also prohibits discrimination in residential mortgage lending. The agencies alleged that Provident's discretionary broker compensation policies caused the differences in total broker fees, and that Provident unlawfully discriminated against African-American and Hispanic borrowers in mortgage pricing. Approximately 14,000 African-American and Hispanic borrowers paid higher total broker fees because of this discrimination.

The consent order, which was entered by the court on June 18, 2015, requires Provident to pay $9 million to harmed borrowers, to pay to hire a settlement administrator to distribute funds to the harmed borrowers identified by the CFPB and the DOJ, and to not discriminate against borrowers in assessing total broker fees.[55] Provident will maintain the non-discretionary broker compensation policies and procedures it implemented in 2014. Provident's current policy does not allow discretion in borrower- or lender-paid broker compensation because individual brokers are unable to charge or collect different amounts of fees from different borrowers on a loan-by-loan basis. The consent order also requires that Provident continue to have in place a fair lending training program and broker monitoring program.

Provident must hire a settlement administrator to distribute the $9 million to harmed borrowers.

3.1.2 Auto Finance

Fifth Third Bank

On September 28, 2015, the CFPB resolved an action with Fifth Third Bank (Fifth Third) that requires Fifth Third to change its pricing and compensation system by substantially reducing or eliminating discretionary markups to minimize the risks of discrimination. On that same date, the DOJ also filed a complaint and proposed consent order in the U.S. District Court for the Southern District of Ohio addressing the same conduct. That consent order was entered by the court on October 1, 2015. Fifth Third's past practices resulted in thousands of African-American and Hispanic borrowers paying higher interest rates than similarly-situated non-Hispanic White borrowers for their auto loans. The consent orders require Fifth Third to pay $18 million in restitution to affected borrowers.[56]

As of the second quarter of 2015, Fifth Third was the ninth largest depository auto loan lender in the United States and the seventeenth largest auto loan lender overall. As an indirect auto lender, Fifth Third sets a risk-based interest rate, or "buy rate," that it conveys to auto dealers. Fifth Third then allows auto dealers to charge a higher interest rate when they finalize the transaction with the consumer. As described above, this is typically called "discretionary markup." Markups can generate compensation for dealers while giving them the discretion to charge similarly-situated consumers different rates. Fifth Third's policy permitted dealers to mark up consumers' interest rates as much as 2.5% during the period under review.

From January 2013 through May 2013, the Bureau conducted an examination that reviewed Fifth Third's indirect auto lending business for compliance with ECOA and Regulation B. On March 6, 2015, the Bureau referred the matter to the DOJ. The CFPB found and the DOJ alleged that Fifth Third's indirect lending policies resulted in minority borrowers paying higher discretionary markups, and that Fifth Third violated ECOA by charging African-American and Hispanic borrowers higher discretionary markups for their auto loans than non-Hispanic White borrowers without regard to the creditworthiness of the borrowers. Fifth Third's discriminatory pricing and compensation structure resulted in thousands of minority borrowers paying, on average, over $200 more for their auto loans originated between January 2010 and September 2015.

The CFPB's administrative consent order and the DOJ's consent order require Fifth Third to reduce dealer discretion to mark up the interest rate to a maximum of 1.25% for auto loans with terms of five years or less, and 1% for auto loans with longer terms, or move to non-discretionary dealer compensation. Fifth Third is also required to pay $18 million to affected African-American and Hispanic borrowers whose auto loans were financed by Fifth Third between January 2010 and September 2015. The Bureau did not assess penalties against Fifth Third because of the bank's responsible conduct, namely the proactive steps the bank is taking that directly address the fair lending risk of discretionary pricing and compensation systems by substantially reducing or eliminating that discretion altogether. In addition, Fifth Third Bank must hire a settlement administrator who will contact consumers, distribute the funds, and ensure that affected borrowers receive compensation.

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[54] *United States and Consumer Financial Protection Bureau* v. *Provident Funding Associates, L.P.*, No. 3:15–cv–023–73 (N.D. Cal. May 28, 2015) (complaint), *available at http:// files.consumerfinance.gov/f/201505_cfpb_complaint-provident-funding-associates.pdf.*

[55] *United States* v. *Provident Funding Associates, L.P.*, No. 3:15–cv–02373 (N.D. Cal. June 18, 2015) (consent order), *available at http:// files.consumerfinance.gov/f/201505_cfpb_consent-order-provident-funding-associates.pdf.*

[56] *In re, Fifth Third Bank*, No. 2015–CFPB–0024 (Sept. 28, 2015) (consent order), *available at http:// files.consumerfinance.gov/f/201509_cfpb_consent-order-fifth-third-bank.pdf.*

American Honda Finance Corporation

On July 14, 2015, the CFPB resolved an action with American Honda Finance Corporation (Honda) that, like Fifth Third Bank, requires Honda to change its pricing and compensation system by substantially reducing or eliminating discretionary markups to minimize the risks of discrimination.[57] On that same date, the DOJ also filed a complaint and proposed consent order in the U.S. District Court for the Central District of California addressing the same conduct. That consent order was entered by the court on July 16, 2015. Honda's past practices resulted in thousands of African-American, Hispanic, and Asian and Pacific Islander borrowers paying higher interest rates than similarly-situated non-Hispanic White borrowers for their auto loans. As part of the enforcement action, Honda is required to pay $24 million in restitution to affected borrowers.

Honda is wholly-owned by American Honda Motor Co., Inc. and as of the first quarter of 2015, Honda was the fourth largest captive auto lender in the United States and the ninth largest auto lender overall. As an indirect auto lender, Honda sets a risk-based interest rate, or "buy rate," that it conveys to auto dealers. Honda then allows auto dealers to charge a higher interest rate when they finalize the transaction with the consumer. As described above, this is typically called "discretionary markup." The discretionary markups can generate compensation for dealers while giving them the discretion to charge similarly-situated consumers different rates. Honda permitted dealers to mark up consumers' risk-based interest rates as much as 2.25% for contracts with terms of five years or less, and 2% for contracts with longer terms.

The enforcement action was the result of a joint CFPB and DOJ investigation that began in April 2013. The agencies investigated Honda's indirect auto lending activities' compliance with ECOA. The CFPB found and the DOJ alleged that Honda's indirect lending policies resulted in minority borrowers paying higher discretionary markups and that Honda violated ECOA by charging African-American, Hispanic, and Asian and Pacific Islander borrowers higher discretionary markups for their auto loans than similarly-situated non-Hispanic White borrowers. Honda's discriminatory pricing and compensation structure resulted in thousands of minority borrowers paying, on average, from $150 to over $250 more for their auto loans originated from January 2011 through July 14, 2015.

The CFPB's administrative consent order and the DOJ's consent order require Honda to reduce dealer discretion to mark up the interest rate to a maximum of 1.25% for auto loans with terms of five years or less, and 1% for auto loans with longer terms, or move to non-discretionary dealer compensation. Honda is also required to pay $24 million to affected African-American, Hispanic, and Asian and Pacific Islander borrowers whose auto loans were financed by Honda between January 1, 2011 and July 14, 2015. As in the case of Fifth Third, the Bureau did not assess penalties against Honda because of Honda's responsible conduct, namely the proactive steps the company took to directly address the fair lending risk of discretionary pricing and compensation systems by substantially reducing or eliminating that discretion altogether. In addition, Honda, through American Honda Motor Co., will contact consumers, distribute the funds, and ensure that affected borrowers receive compensation.

3.2 Implementing Public Consent Orders

When an enforcement action is resolved through a public consent order, the Bureau (and the DOJ, where relevant) will take steps to ensure that the respondent or defendant complies with the requirements of the order. As appropriate to the specific requirements of individual public consent orders, the Bureau may take steps to ensure that borrowers who are eligible for compensation receive remuneration and that the defendant has implemented a comprehensive fair lending compliance management system. Throughout 2015, the Offices of Fair Lending and Supervision worked to implement and oversee compliance with three separate consent orders that were issued by Federal courts or the Bureau's Director in prior years. A description of these is included below.

3.2.1 Settlement Administration

Synchrony Bank, Formerly Known as GE Capital Retail Bank

On June 19, 2014, the CFPB, as part of a joint enforcement action with the DOJ, ordered Synchrony Bank, formerly known as GE Capital, to provide $169 million in relief to about 108,000 borrowers excluded from debt relief offers because of their national origin.[58]

As previously reported, Synchrony Bank had two different promotions that allowed credit card customers with delinquent accounts to address their outstanding balances, one by paying a specific amount to bring their account current in return for a statement credit and another by paying a specific amount in return for waiving the remaining account balance. However, it did not extend these offers to any customers who indicated that they preferred to communicate in Spanish and/or had a mailing address in Puerto Rico, even if the customer met the promotion's qualifications. This practice denied consumers the opportunity to benefit from these promotions on the basis of national origin in direct violation of ECOA. This public enforcement action represented the federal government's largest credit card discrimination settlement in history.

In the course of administering the settlement, Synchrony Bank identified additional consumers who were excluded from these offers and had a mailing address in Puerto Rico or indicated a preference to communicate in Spanish. Synchrony Bank provided a total of approximately $201 million in redress including payments, credits, interest, and debt forgiveness to approximately 133,463 eligible consumers. This amount includes approximately $4 million of additional redress based on its identification of additional eligible consumers. Synchrony completed redress to consumers as of August 8, 2015.

PNC Bank, as Successor to National City Bank

As previously reported, on December 23, 2013, the CFPB and the DOJ filed a joint complaint against National City Bank for discrimination in mortgage lending, along with a proposed order to settle the complaint. Specifically, the complaint alleged that National City Bank charged higher prices on mortgage loans to African-American and Hispanic borrowers than similarly-situated non-Hispanic White borrowers between 2002 and 2008. The consent order, which was entered on January 9, 2014, by the U.S. District Court for the Western District of Pennsylvania, required National City's successor, PNC Bank, to pay $35 million in restitution to harmed African-American and Hispanic borrowers. The consent order also required PNC to pay to hire a settlement administrator to distribute funds to victims identified by the CFPB and the DOJ.[59]

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[57] *In re. American Honda Finance Corp.*, No. 2015–CFPB–0014 (July 14, 2015) (consent order), *available at http://files.consumerfinance.gov/f/201507_cfpb_consent-order_honda.pdf.*

[58] *In re. Synchrony Bank, f/k/a GE Capital Retail Bank*, No. 2014–CFPB–0007 (June 19, 2014) (consent order), *available at http://files.consumerfinance.gov/f/201406_cfpb_consent-order_synchrony-bank.pdf.*

In order to carry out the Bureau's and the DOJ's 2013 settlement with PNC, as successor in interest to National City Bank, the Bureau and the DOJ worked closely with the settlement administrator and PNC to distribute $35 million to harmed African-American and Hispanic borrowers. On September 16, 2014, the Bureau published a blog post (available in English [60] and Spanish [61]) announcing the selection of the settlement administrator and providing information on contacting the administrator and submitting settlement forms. Under the supervision of the government agencies, the settlement administrator contacted over 90,000 borrowers who were eligible for compensation and made over 120,000 phone calls in an effort to ensure maximum participation. As of the participation deadline of February 17, 2015, borrowers on approximately 74% of the affected loans responded to participate in the settlement. The settlement administrator mailed checks to participating borrowers totaling $35 million plus accrued interest on May 15, 2015.

Ally Financial Inc. and Ally Bank

On December 19, 2013, the CFPB and the DOJ entered into the federal government's largest auto loan discrimination settlement in history [62] which required Ally Financial Inc. and Ally Bank (Ally) to pay $80 million in damages to harmed African-American, Hispanic, and Asian and Pacific Islander borrowers. The CFPB found and the DOJ alleged that minority borrowers on more than 235,000 auto loans paid higher interest rates than similarly-situated non-Hispanic White borrowers between April 2011 and December 2013 because of Ally's discriminatory discretionary markup and compensation system.

Ally hired a settlement administrator to distribute the $80 million in damages to harmed borrowers. On June 15, 2015, the Bureau published a blog post announcing the selection of the settlement administrator and providing information on contacting the administrator and submitting settlement forms.[63] On June 26, 2015, the settlement administrator sent letters to Ally borrowers identified as potentially eligible for remediation from the settlement fund. Consumers had until October 2015 to respond, after which the agencies determined the final distribution amount for each eligible borrower. Following the conclusion of the participation period, Ally's settlement administrator identified approximately 301,000 eligible, participating borrowers and co-borrowers—representing approximately 235,000 loans—who were overcharged as a result of Ally's discriminatory pricing and compensation structure during the relevant time period. On January 29, 2016, the Ally settlement administrator mailed checks totaling $80 million plus accrued interest to harmed borrowers participating in the settlement.[64] In addition to the $80 million in settlement payments for consumers who were overcharged between April 2011 and December 2013, Ally paid roughly $38.9 million to consumers that Ally determined were both eligible and overcharged on auto loans issued during 2014, pursuant to its continuing obligations under the terms of the orders.

3.3 Equal Credit Opportunity Act Referrals to the Department of Justice

The CFPB must refer to the DOJ a matter when it has reason to believe that a creditor has engaged in a pattern or practice of lending discrimination in violation of ECOA.[65] The CFPB also may refer other potential ECOA violations to the DOJ. In 2015, the CFPB referred eight matters to the DOJ. With respect to two of the eight matters referred to the DOJ, the DOJ declined to open an independent investigation and deferred to the Bureau's handling of the matter. The CFPB's referrals to the DOJ in 2015 covered a variety of practices, specifically discrimination in mortgage lending on the bases of the receipt of public assistance income, sex, marital status, race, color, and national origin, and discrimination in auto lending on the bases of age, receipt of public assistance income, sex, marital status, race, and national origin.

3.4 Pending Fair Lending Investigations

In 2015 the Bureau had a number of ongoing fair lending investigations and authorized enforcement actions against a number of institutions. In particular, as mortgage lending is among the Bureau's top priorities, the Bureau focused its fair lending enforcement efforts on addressing the unlawful practice of redlining. Redlining occurs when a lender provides unequal access to credit, or unequal terms of credit, because of the racial or ethnic composition of a neighborhood. At the end of 2015, the Bureau had a number of authorized enforcement actions in settlement negotiations and pending investigations.

The Bureau is also focused on institutions' indirect auto lending, specifically discrimination resulting from lender compensation policies that give auto dealers discretion to set loan prices. In 2015, the Bureau investigated several indirect auto lenders and at the end of 2015 had a number of authorized enforcement actions in settlement negotiations and pending investigations.

Finally, the Bureau is also investigating other areas for potential discrimination. At the end of 2015, the Bureau had a number of pending investigations in other markets including credit cards.

4. Rulemaking and Related Guidance

4.1 Home Mortgage Disclosure Act (Regulation C)

In October 2015, the Bureau issued and published in the **Federal Register** a final rule to implement the Dodd-Frank amendments to HMDA.[66] The rule also finalizes certain amendments that the Bureau believes are necessary to improve the utility of HMDA data, further the purposes of HMDA, improve the quality of HMDA data, and create a more transparent mortgage market.

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[59] *Consumer Financial Protection Bureau* v. *National City Bank,* No. 2:13–cv–01817–CB (W.D. Pa. Jan. 9, 2014) (consent order), *available at http://files.consumerfinance.gov/f/201312_cfpb_consent_national-city-bank.pdf.*

[60] Patrice Ficklin, Consumer Financial Protection Bureau, *National City Bank Settlement Administrator Will Contact Eligible Borrowers Soon* (Sept. 16, 2014), *available at http://www.consumerfinance.gov/blog/national-city-bank-settlement-administrator-will-contact-eligible-borrowers-soon/.*

[61] Patrice Ficklin, Consumer Financial Protection Bureau, *El administrador de negociación del National City Bank pronto se pondrá en contacto con los prestatarios elegibles* (Sept. 16, 2014), *available at http://www.consumerfinance.gov/blog/el-administrador-de-negociacion-del-national-city-bank-pronto-se-pondra-en-contacto-con-los-prestatarios-elegibles/.*

[62] *In re. Ally Financial Inc.,* No. 2013–CFPB–0010 (Dec. 20, 2013) (consent order), *available at http://files.consumerfinance.gov/f/201312_cfpb_consent-order_ally.pdf.*

[63] Patrice Ficklin, Consumer Financial Protection Bureau, *Ally Settlement Administrator Will Contact Eligible Borrowers Soon* (June 15, 2015), *available at http://www.consumerfinance.gov/blog/ally-settlement-administrator-will-contact-eligible-borrowers-soon/.*

[64] Patrice Ficklin, Consumer Financial Protection Bureau, *Harmed Ally Borrowers Have Been Sent $80 Million in Damages* (January 29, 2016), *available at http://www.consumerfinance.gov/blog/harmed-ally-borrowers-have-been-sent-80-million-in-damages/.*

[65] 15 U.S.C. 1691e(g).

[66] 80 FR 66128 (Oct. 28, 2015), *available at https://www.gpo.gov/fdsys/pkg/FR-2015-10-28/pdf/2015-26607.pdf; see* 12 CFR part 1003.

4.1.1 HMDA History

HMDA was enacted 40 years ago to respond to redlining concerns and the effects of disinvestment in urban neighborhoods and to encourage reinvestment in the nation's cities. The statute, as implemented by Regulation C, is intended to provide the public with loan data that can be used to help determine whether financial institutions are serving the housing needs of their communities; to assist public officials in distributing public-sector investment to attract private investment in communities where it is needed; and to assist in identifying possible discriminatory lending patterns and enforcing anti-discrimination statutes.[67] HMDA data are also used for a range of mortgage market monitoring purposes by community groups, public officials, the financial industry, economists, academics, social scientists, regulators, and the media. Bank regulators and other agencies use HMDA to monitor compliance with and enforcement of the Community Reinvestment Act (CRA) and federal anti-discrimination laws, including ECOA and the Fair Housing Act (FHA).

The Dodd-Frank Act transferred rulemaking authority for HMDA to the Bureau, effective July 2011. It also amended HMDA to require financial institutions to report new data points and authorized the Bureau to require financial institutions to collect, record, and report additional information.

4.1.2 Rule History

On August 29, 2014, the Bureau published in the **Federal Register** a proposed rule to implement changes to Regulation C and sought public comment on the proposal.[68] The comment period ran through the end of October 2014. The Bureau received approximately 400 comments on its HMDA proposal. Commenters included consumer advocacy groups; national, State, and regional industry trade associations; banks; credit unions; software providers; housing counselors; academics; and others. The Bureau also consulted with or offered to consult with the prudential regulators (the Federal Reserve Board (FRB), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), and the Office of the Comptroller of the Currency (OCC)), the DOJ, HUD, the Federal Housing Finance Agency, the Securities and Exchange Commission (SEC), and the FTC.

In adopting the final rule, the Bureau carefully reviewed and considered all of the comments it received, and published the final rule in the **Federal Register** on October 28, 2015 (the HMDA Rule). The Bureau has also issued a number of regulatory implementation tools and resources to assist industry in understanding and implementing the new rule's requirements, which are available at *www.consumerfinance.gov/hmda.*

4.1.3 Summary of Regulation C Changes

The rule modifies the types of institutions and transactions subject to Regulation C, adds new data reporting requirements, clarifies several existing data reporting requirements and modifies the processes for reporting and disclosing the required data.

The HMDA Rule changes institutional coverage in two phases. First, to reduce burden on industry, certain lower-volume depository institutions will no longer be required to collect and report HMDA data beginning in 2017. A bank, savings association, or credit union will not be subject to Regulation C in 2017 unless it meets the asset-size, location, federally related, and loan activity tests under current Regulation C and it originates at least 25 home purchase loans, including refinancings of home purchase loans, in both 2015 and 2016. Second, effective January 1, 2018, the HMDA Rule adopts a uniform loan-volume threshold for all institutions. Beginning in 2018, an institution will be subject to Regulation C if it originated at least 25 covered closed-end mortgage loan originations in each of the two preceding calendar years or at least 100 covered open-end lines of credit in each of the two preceding calendar years. Other applicable coverage requirements will apply, depending on the type of covered entity.

The Rule also modifies the types of transactions covered under Regulation C. In general, the HMDA Rule adopts a dwelling-secured standard for transactional coverage. Beginning on January 1, 2018, covered loans under the HMDA Rule generally will include closed-end mortgage loans and open-end lines of credit secured by a dwelling and will not include unsecured loans.

For HMDA data collected on or after January 1, 2018, covered institutions will collect, record, and report additional information on covered loans. New data points include those specifically identified in Dodd-Frank as well as others the Bureau determined will assist in carrying out HMDA's purposes. The HMDA Rule adds new data points for applicant or borrower age, credit score, automated underwriting system information, debt-to-income ratio, combined loan-to-value ratio, unique loan identifier, property value, application channel, points and fees, borrower-paid origination charges, discount points, lender credits, loan term, prepayment penalty, non-amortizing loan features, interest rate, and loan originator identifier as well as other data points. The HMDA Rule also modifies several existing data points.

For data collected on or after January 1, 2018, the HMDA Rule amends the requirements for collection and reporting of information regarding an applicant's or borrower's ethnicity, race, and sex. First, a covered institution will report whether or not it collected the information on the basis of visual observation or surname. Second, covered institutions must permit applicants to self-identify their ethnicity and race using disaggregated ethnic and racial subcategories. However, the HMDA Rule will not require or permit covered institutions to use the disaggregated subcategories when identifying the applicant's or borrower's ethnicity and race based on visual observation or surname.

The Bureau is developing a new web-based submission tool for reporting HMDA data, which covered institutions will use beginning in 2018. Regulation C's appendix A is amended effective January 1, 2018 to include new transition requirements for data collected in 2017 and reported in 2018. Covered institutions will be required to electronically submit their loan application registers (LARs). Beginning with data collected in 2018 and reported in 2019, covered institutions will report the new dataset required by the HMDA Rule, using revised procedures that will be available at *www.consumerfinance.gov/hmda.*

Beginning in 2020, the HMDA Rule requires quarterly reporting for covered institutions that reported a combined total of at least 60,000 applications and covered loans in the preceding calendar year. An institution will not count covered loans that it purchased in the preceding calendar year when determining whether it is required to report on a quarterly basis. The first quarterly submission will be due by May 30, 2020.

Beginning in 2018, covered institutions will no longer be required to provide a disclosure statement or a modified LAR to the public upon request. Instead, in response to a request, a covered institution will provide a notice that its disclosure statement and modified LAR are available on the Bureau's Web site. These revised disclosure requirements will apply to data collected on or after January 1, 2017 and reported in or after 2018.

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[67] 12 U.S.C. 2801 *et seq.*

[68] 79 FR 51732 (Aug. 29, 2014), *available at http://www.gpo.gov/fdsys/pkg/FR-2014-08-29/pdf/2014-18353.pdf.*

For data collected in or after 2018 and reported in or after 2019, the Bureau will use a balancing test to determine whether and, if so, how HMDA data should be modified prior to its disclosure in order to protect applicant and borrower privacy while also fulfilling HMDA's disclosure purposes. At a later date, the Bureau will provide a process for the public to provide input regarding the application of this balancing test to determine the HMDA data to be publicly disclosed.

4.1.4 Reducing Industry Burden

The Bureau took a number of steps to reduce industry burden while ensuring HMDA data are useful and reflective of the current housing finance market. A key part of this balancing is ensuring an adequate implementation period. Most provisions of the HMDA Rule go into effect on January 1, 2018—more than two years after publication of the Rule—and apply to data collected in 2018 and reported in 2019 or later years. At the same time, an institutional coverage change that will reduce the number of depository institutions that need to report is effective earlier: On January 1, 2017. Institutions subject to the new quarterly reporting requirement will have additional time to prepare: That requirement is effective on January 1, 2020, and the first quarterly submission will be due by May 30, 2020.

As with all of its rules, the Bureau continues to look for ways to help the mortgage industry implement the new mortgage lending data reporting rules, and has created regulatory implementation resources that are available online. These resources include an overview of the final rule, a plain-language compliance guide, a timeline with various effective dates, a decision tree to help institutions determine whether they need to report mortgage lending data, a chart that provides a summary of the reportable data, and a chart that describes when to report data as not applicable. The Bureau will monitor implementation progress and will be publishing additional regulatory implementation tools and resources on its Web site to support implementation needs.[69]

4.1.5 HMDA Data Resubmission RFI

In response to dialogue with industry and other stakeholders, the Bureau is considering modifications to its current resubmission guidelines. In comments on the Bureau's proposed changes to Regulation C, some stakeholders asked that the Bureau adjust its existing HMDA resubmission guidelines to reflect the expanded data the Bureau will collect under the HMDA Rule.

Accordingly, on January 7, 2016, the Bureau published on its Web site a Request for Information (RFI) asking for public comment on the Bureau's HMDA resubmission guidelines.[70] Specifically, the Bureau requested feedback on the Bureau's use of resubmission error thresholds; how they should be calculated; whether they should vary with the size of the HMDA submission or kind of data; and the consequences for exceeding a threshold, among other topics. Some examples of questions posed to the public include:

- Should the Bureau continue to use error percentage thresholds to determine the need for data resubmission? If not, how else may the Bureau ensure data integrity and compliance with HMDA and Regulation C?
- If the Bureau retains error percentage thresholds, should the thresholds be calculated differently than they are today? If so, how and why?
- If the Bureau retains error percentage thresholds, should it continue to maintain separate error thresholds for the entire HMDA LAR sample and individual data fields within the LAR sample? If not, why?

The RFI was published in the **Federal Register** on January 12, 2016.[71] The 60-day comment period ended on March 14, 2016. As of this report's publication date, the Bureau was reviewing the comments received in response to the RFI.

4.2 Small Business Data Collection

Section 1071 of Dodd-Frank requires financial institutions to compile, maintain, and submit to the Bureau certain data on credit applications for women-owned, minority-owned, and small businesses.[72] Congress enacted Section 1071 for the purpose of facilitating enforcement of fair lending laws and identifying business and community development needs and opportunities for women-owned, minority-owned, and small businesses. In December 2015, the Bureau updated its Unified Agenda and Regulatory Plan to reflect that rulemaking pursuant to Section 1071 is now in the pre-rule stage.[73] The first stage of the Bureau's work will be focused on outreach and research, after which the Bureau will begin developing proposed rules concerning the data to be collected and determining the appropriate procedures and privacy protections needed for information-gathering and public disclosure.

The Bureau has begun to explore some of the issues involved in the rulemaking, including engaging numerous stakeholders about the statutory reporting requirements. The Bureau is also considering how best to work with other agencies to, in part, gain insight into existing small business data collection efforts and possible ways to cooperate in future efforts. In addition, current and future small business lending supervisory activity will help expand and enhance the Bureau's knowledge in this area, including the credit process; existing data collection processes; and the nature, extent, and management of fair lending risk.

4.3 Amicus Program

The Bureau's Amicus Program files amicus, or friend-of-the-court, briefs in court cases concerning the federal consumer financial protection laws that the Bureau is charged with implementing, including ECOA. These amicus briefs provide the courts with our views on significant consumer financial protection issues and help ensure that consumer financial protection statutes and regulations are correctly and consistently interpreted by the courts.

On May 28, 2015, the Bureau with the Solicitor General of the United States filed an amicus brief in *Hawkins* v. *Community Bank of Raymore* addressing the question whether Regulation B permissibly interprets ECOA's definition of "applicant" to encompass guarantors.[74] Regulation B forbids creditors from requiring one spouse to guarantee the other spouse's debt obligation solely because the couple is married. The regulation further defines the "applicants" protected from that discriminatory practice to include any such guarantor. The amicus brief argues that this interpretation of "applicant" is a permissible interpretation of ECOA that is entitled to deference and should be upheld.[75] In an equally divided 4–4 decision that lacks precedential effect, the Supreme Court affirmed the decision of the Court of Appeals for the Eighth Circuit.[76]

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[69] These resources are *available at http://www.consumerfinance.gov/regulatory-implementation/hmda/.*

[70] *See http://www.consumerfinance.gov/newsroom/cfpb-seeks-public-input-on-mortgage-lending-information-resubmission-guidelines/.*

[71] 81 FR 1405 (Jan. 12, 2016).

[72] Dodd-Frank Act, section 1071 (codified at 15 U.S.C. 1691c–2).

[73] 80 FR 78055, 78058 (Dec. 15, 2015).

[74] Brief for the United States as Amicus Curiae Supporting Petitioners, *Hawkins* v. *Community Bank of Raymore,* 135 S.Ct. 1492 (2015) (granting cert.) (No. 14–520), *available at http://www.consumerfinance.gov/amicus/.*

In 2015, the Bureau also began the process of working on an amicus brief in *Alexander* v. *Ameripro Funding, Inc.*, appealing the United States District Court for the Southern District of Texas's dismissal of an ECOA complaint alleging discrimination because all or part of the applicants' income derives from a public assistance program. The District Court held that the allegations in the complaint failed to state a *prima facie* claim of discrimination and to allege direct evidence of discrimination because the allegations were "conclusory" and failed to allege hostility or animus.[77] The Bureau filed its amicus brief on February 23, 2016, and argued that allegations that creditors refused to consider public assistance income state a claim under ECOA sufficient to survive a motion to dismiss. The brief also argued that hostility and animus are not elements of a discrimination claim under ECOA.[78]

The Bureau's Amicus Program is ongoing and we welcome suggestions of pending cases that might make good candidates for the program.

5. Research

As part of the Bureau's commitment to transparency and to being a data-driven agency, we continue to evaluate and share our fair lending methodologies and analytical approaches. In the Bureau's 2015 Fair Lending Report to Congress,[79] we discussed our evaluation of our proxy methodology, and responded to feedback from stakeholders. During the past year we have engaged in further dialogue around the Bureau's proxy methodology. We have also described the Bureau's approach to analyzing underwriting outcomes.

5.1 Proxy Methodology

On September 17, 2014, the Bureau published a white paper, titled *Using Publicly Available Information to Proxy for Unidentified Race and Ethnicity*, that details the Bayesian Improved Surname Geocoding (BISG) methodology the Bureau uses to calculate the probability that an individual is of a specific race and ethnicity based on his or her last name and place of residence.[80]

The analysis in the white paper showed that, compared to the distribution of self-reported race and ethnicity in a sample of mortgage applicants, the BISG proxy underestimated the percentage of non-Hispanic White mortgage applicants and overestimated the percentage of minority applicants. The analysis suggested that this pattern of under- and over-estimation is likely more pronounced for mortgage applicants, who tend to be disproportionately more non-Hispanic White than the U.S. adult population, and that in other settings, such as auto lending, the pattern may be less pronounced.

Subsequent analysis of auto loan originations reported in the Consumer Expenditure Survey (CEX), a publicly-available survey of U.S. consumer expenditures conducted by the Bureau of Labor Statistics,[81] and mortgage originations reported in the 2012 HMDA data supports this point. For instance, 12% of the U.S. adult population is African American, and in 2012 African-American consumers received 10% of auto loan originations compared to 4% of mortgage loan originations. The general pattern of the percentage of auto loan originations being closer to the corresponding population percentage holds for non-Hispanic White, Asian and Pacific Islander, and Hispanic borrowers. This evidence suggests that for a nationally representative sample of consumers, the distribution of race and ethnicity for auto loan borrowers more closely approximates the distribution of race and ethnicity in the U.S. adult population than does the distribution of race and ethnicity for mortgage borrowers.

TABLE 1—COMPARISON OF DISTRIBUTIONS OF RACE AND ETHNICITY

Race/ethnicity	Adult population (census 2010) (percent)	Auto loan originations (CEX 2012) (percent)	Mortgage loan originations (HMDA 2012) (percent)
Non-Hispanic White	67	73	82
African American	12	10	4
Asian and Pacific Islander	5	4	7
Hispanic	14	11	7

The Bureau's methodology is designed to arrive at the best estimate, based on publicly available data, of the total number of harmed borrowers and to accurately identify the full scope of harm. The Bureau makes final determinations regarding discriminatory outcomes and their scope in dialogue with individual lenders, and carefully considers every argument lenders make about alternative ways to identify the number of harmed borrowers and the amount of harm. These alternative methods do not typically suggest an absence of discrimination or consumer harm, but rather a lower level than the Bureau's original estimates. In some instances, as a result of dialogue with institutions, the Bureau has adopted changes to our analyses and reduced our estimates in response to specific alternatives offered by individual lenders with regard to their specific loan portfolios. In other instances, the Bureau has retained its original estimates, for example, where we have concluded that the proffered alternatives would underestimate the level of discrimination and harm without an adequate basis.

As we stated in our white paper, the Bureau is committed to continuing our dialogue with other federal agencies, lenders, industry groups, consumer advocates, and researchers regarding the Bureau's methodology, the importance of fair lending compliance, and the use of proxies when self-reported race and ethnicity is unavailable. We expect the methodology will continue to evolve as enhancements are identified that further increase accuracy and performance.

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[75] *Id.* at 11.

[76] *Hawkins* v. *Community Bank of Raymore*, 577 U.S. (2016), 2016 WL 1092416.

[77] *Alexander* v. *Ameripro Funding, Inc.*, 2015 WL 4545625 at *4 (S.D. Tex. 2015).

[78] Brief of Amicus Curiae Consumer Financial Protection Bureau in Support of Appellants and Reversal, *Alexander, et al.* v. *Ameripro Funding, Inc., et al.*, No. 15–20710 (5th Cir. Feb. 23, 2016), *available at http://www.consumerfinance.gov/amicus/.*

[79] *Available at http://files.consumerfinance.gov/f/201504_cfpb_fair_lending_report.pdf.*

[80] *Available at http://www.consumerfinance.gov/reports/using-publicly-available-information-to-proxy-for-unidentified-race-and-ethnicity/.*

[81] *See* United States Department of Labor, Bureau of Labor Statistics, Consumer Expenditure Survey, public-use microdata *available at http://www.bls.gov/cex/pumdhome.htm.*

5.2 Methodologies That Can Be Used To Understand Underwriting Disparities

As noted above, the Fall 2015 edition of *Supervisory Highlights* detailed the Bureau's supervisory work on ECOA targeted reviews that analyze an institution's underwriting practices, including methodologies used to understand underwriting outcomes and identify potential disparities.

In CFPB underwriting reviews, which typically evaluate potential disparities in denial rates, Bureau economists and analysts may rely on various methods to measure whether outcomes differ based on race, national origin, sex, or other prohibited bases.

One traditional method involves odds ratios, which measure the ratio of the odds of two different events. In the context of an underwriting analysis, the ratio reflects the odds of a loan application denial between groups of borrowers.

However, the Bureau may use other methods of analysis, including marginal effects, to gain a better understanding of the nature and relative magnitude of any underwriting disparities. In contrast to odds ratios, the marginal effect expresses the absolute change in denial probability associated with being a member of a prohibited basis group. For example, a marginal effect of 0.10 in an underwriting analysis means the probability of denial for the test group is 10 percentage points higher than the probability of denial for the control group. When the CFPB calculates marginal effects, it also considers a conditional marginal effect, which provides the increased chances of denial for a group holding all other factors constant, and thus controls for other, legitimate credit characteristics that may affect the probability of denial.

An additional benefit of marginal effects is that they can be compared across groups and institutions, and to the institution's overall approval and denial rates in the specific product reviewed. In this manner, the CFPB can contextualize the disparity to determine whether it warrants additional inquiry. In a number of instances, our review of marginal effects data has allowed us to decide that a particular disparity does not merit additional inquiry.

6. Interagency Coordination

6.1 Interagency Coordination and Engagement

The Office of Fair Lending regularly coordinates the CFPB's fair lending efforts with those of other federal agencies and state regulators to promote consistent, efficient, and effective enforcement of federal fair lending laws.[82] Through our interagency engagement, we work to address current and emerging fair lending risks.

6.1.1 Financial Fraud Enforcement Task Force's Non-Discrimination Working Group

The Financial Fraud Enforcement Task Force was established in November 2009 by an Executive Order aimed at strengthening the efforts of the DOJ and federal, state, and local agencies "to investigate and prosecute significant financial crimes and other violations relating to the current financial crisis and economic recovery efforts, recover the proceeds of such financial crimes and violations, and ensure just and effective punishment of those who perpetuate financial crimes and violations."[83] The Non-Discrimination Working Group focuses on and monitors financial fraud or other unfair practices and emerging trends in order to proactively address emerging discriminatory practices directed at people or neighborhoods based on race, color, religion, national origin, gender, age, disability, or other bases prohibited by law.

6.1.2 Interagency Task Force on Fair Lending

The CFPB, along with the FTC, DOJ, HUD, FDIC, FRB, NCUA, OCC, and the Federal Housing Finance Agency, comprise the Interagency Task Force on Fair Lending. The Task Force meets regularly to discuss fair lending enforcement efforts, share current methods of conducting supervisory and enforcement fair lending activities, and coordinate fair lending policies.

6.1.3 Interagency Working Group on Fair Lending Enforcement

The CFPB belongs to a standing working group of Federal agencies—with the DOJ, HUD, and FTC—that meets regularly to discuss issues relating to fair lending enforcement. The agencies use these meetings to discuss fair lending developments and trends, methodologies for evaluating fair lending risks and violations, and coordination of fair lending enforcement efforts. In addition to these interagency working groups, we meet periodically and on an ad hoc basis with the prudential regulators to coordinate our fair lending work.

6.1.4 FFIEC HMDA/Community Reinvestment Act Data Collection Subcommittee

The CFPB takes part in the FFIEC HMDA/Community Reinvestment Act Data Collection Subcommittee, which is a subcommittee of the FFIEC Task Force on Consumer Compliance, as its work relates to the collection and processing of HMDA data jurisdiction.

6.2 CFPB–HUD Memorandum of Understanding

To increase efficiency and reduce industry burden where appropriate, the Bureau and HUD frequently collaborate and share information when there is overlapping authority. On September 2, 2015, the Bureau and HUD entered into a Memorandum of Understanding (MOU) delineating how each agency will use and properly share information to enhance fair lending compliance and interagency collaboration around institutions and issues over which the two agencies share jurisdiction. The MOU further extends the Bureau's robust working relationship with HUD. In particular, HUD can now access the Bureau's Government Portal, allowing HUD to view the Bureau's consumer complaints. HUD, in turn, provides to the Bureau reports describing the fair lending complaints that it has received. Additionally, the agencies have agreed to coordinate joint fair lending investigations to minimize duplication of efforts; meet quarterly to discuss current fair lending investigations of entities within the jurisdiction of both Agencies; coordinate action(s) in a manner consistent and complementary to each agency's actions, including determining whether multiple or joint actions are necessary and appropriate; notify each agency of relevant information under specified circumstances; and meet annually to assess the implementation of the MOU.

7. Outreach: Promoting Fair Lending Compliance and Education

Pursuant to Dodd-Frank,[84] the Office of Fair Lending regularly engages in outreach with Members of Congress, industry, bar associations, consumer advocates, civil rights organizations, other government agencies, and other stakeholders to help educate and inform about fair lending. The Bureau is committed to communicating directly with all stakeholders on its policies, compliance expectations, and fair lending priorities. As part of this commitment to outreach and education in the area of fair lending, equal opportunity and ensuring fair access to credit, Bureau personnel have engaged in dialogue with stakeholders on issues including the use of public assistance income in underwriting, disparate impact, HMDA data collection and reporting, indirect auto financing, the use of proxy methodology, and the unique challenges facing limited English proficient (LEP) and lesbian, gay, bisexual and transgender (LGBT) consumers in accessing credit. Outreach is accomplished through issuance of Interagency Statements, *Supervisory Highlights,* Compliance Bulletins, and blog posts, speeches and presentations at conferences and trainings, interaction with Members of Congress and their staff, and participating in convenings to discuss fair lending and access to credit matters.

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[82] Dodd-Frank Act, section 1013(c)(2)(B) (codified at 12 U.S.C. 5493(c)(2)(B)).

[83] Exec. Order No. 13519, 74 FR 60123 (Nov. 17, 2009).

[84] Dodd-Frank Act, section 1013(c)(2)(C) (codified at 12 U.S.C. 5493(c)(2)(C)).

7.1 Section 8 HCV Homeownership Compliance Bulletin

When the Bureau becomes aware of compliance issues that may be widespread, it works to share information with industry stakeholders and consumers to address the concerns. On May 11, 2015, the Bureau issued a compliance bulletin on the Section 8 Housing Choice Voucher (HCV) Homeownership Program.[85] The Bulletin reminds creditors of their obligations under ECOA[86] and Regulation B[87] to provide non-discriminatory access to credit for mortgage applicants using income from the Section 8 HCV Homeownership Program. In addition to publishing the Bulletin on its Web site, the Bureau published a blog post to raise consumer awareness of the Bulletin and the issues it addresses.[88]

The Bureau became aware of circumstances where institutions were excluding or refusing to consider income derived from the Section 8 HCV Homeownership Program during mortgage loan application and underwriting processes. Some institutions have restricted the use of Section 8 HCV Homeownership Program vouchers to only certain home mortgage loan products or delivery channels. Our reminder to mortgage lenders, in the form of the compliance bulletin, should help consumers who receive Section 8 HCV Homeownership Program vouchers receive fair and equal access to credit and will help industry comply with current law.

7.2 HMDA Rule and RFI

As explained more fully earlier in this report, the Bureau published its final rule implementing the Dodd-Frank Act's amendments to HMDA and Regulation C in October 2015. Prior to publishing its final rule, the Bureau received and reviewed approximately 400 comments in response to its proposed rule. Additionally, the Bureau, in accordance with its obligation under the Dodd-Frank Act to consult with the appropriate prudential regulators and other Federal agencies prior to proposing a rule and during the comment process,[89] proactively met with regulators throughout the rulemaking process to seek and consider their feedback.

In conjunction with the HMDA Rule, the Bureau published a Web page dedicated to HMDA to consolidate resources for consumers, industry, academia, the media and other stakeholders. The HMDA Web page contains the new rule, materials for better understanding the rule and its requirements, a tool to explore HMDA data, helpful facts and figures about HMDA data, and more. The Web page can be accessed at *www.consumerfinance.gov/hmda.*

In addition, on January 12, 2016, the Bureau published in the **Federal Register** a Request for Information (RFI) on possible modifications to the HMDA data resubmission guidelines.[90] More information on both the HMDA Rule and the HMDA resubmission RFI may be found in Section 4.1 of this Report.

7.3 Blog Posts

The Bureau firmly believes that an informed consumer is the best defense against predatory lending practices. When issues arise that consumers need to know about, the Bureau uses many tools to spread the word. The Bureau regularly uses its blog as a tool to communicate effectively to consumers on timely issues, emerging areas of concern, Bureau initiatives, and more. In 2015 we published several blog posts related to fair lending, including announcement of the Hudson City redlining settlement, published in both English[91] and Spanish;[92] updates on the Ally settlement, published in both English[93] and Spanish;[94] information about income from the Section 8 Housing Choice Voucher Homeownership Program;[95] and, a summary of the 2014 Annual Report.[96]

The blog may be accessed any time at *www.consumerfinance.gov/blog.*

7.4 Fair Lending Webinar

On October 15, 2015, along with federal partners from the FRB, the DOJ, the FDIC, the OCC, HUD, and the NCUA, the Office of Fair Lending staff participated in and presented at the 2015 Federal Interagency Fair Lending Hot Topics webinar. The webinar covered several fair lending topics, including the use of data in evaluating fair lending risk, compliance management, maternity leave discrimination, post-origination risks, and auto lending settlements. The webinar was viewed by more than 6,000 registrants.

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[85] Consumer Financial Protection Bureau, Section 8 Housing Choice Voucher Homeownership Program Bulletin 2015–02 (May 11, 2015), *available at http://files.consumerfinance.gov/f/201505_cfpb_bulletin-section-8-housing-choice-voucher-homeownership-program.pdf.*

[86] 15 U.S.C. 1691 *et seq.*

[87] 12 CFR part 1002 *et seq.*

[88] Patrice Ficklin & Daniel Dodd-Ramirez, Income from the Section 8 Housing Choice Voucher Homeownership Program Shouldn't Mean You Don't Qualify for a Mortgage (May 11, 2015), *available at http://www.consumerfinance.gov/blog/income-from-the-section-8-housing-choice-voucher-homeownership-program-shouldnt-mean-you-dont-qualify-for-a-mortgage/.*

[89] Dodd-Frank Act, section 1022(b)(2)(B) (codified at 12 U.S.C. 5512(b)(2)(B)).

[90] Consumer Financial Protection Bureau, Request for Information Regarding Home Mortgage Disclosure Act Resubmission Guidelines 2015–0058 (Jan. 12, 2016), *available at http://files.consumerfinance.gov/f/201601_cfpb_request-for-information-regarding-home-mortgage-disclosure-act-resubmission.pdf.*

[91] Patrice Ficklin, Consumer Financial Protection Bureau, Hudson City Savings Bank to Pay $27 million to Increase Access to Credit in Black and Hispanic Neighborhoods it Discriminated against (September 24, 2015), available at *http://www.consumerfinance.gov/blog/hudson-city-savings-bank-to-pay-27-million-to-increase-access-to-credit-in-black-and-hispanic-neighborhoods-it-discriminated-against/.*

[92] Patrice Ficklin, Consumer Financial Protection Bureau, El Banco de Ahorros Hudson City pagará $27 millones para aumentar el acceso al crédito en vecindarios mayormente afroamericanos e hispanos que discriminaba (October 21, 2015), *available at http://www.consumerfinance.gov/blog/el-banco-de-ahorros-hudson-city-pagara-27-millones-para-aumentar-el-acceso-al-credito-en-vecindarios-mayormente-afroamericanos-e-hispanos-que-discriminaba/.*

[93] Patrice Ficklin, Consumer Financial Protection Bureau, Ally Settlement Administrator Will Contact Eligible Borrowers Soon (June 15, 2015), *available at http://www.consumerfinance.gov/blog/ally-settlement-administrator-will-contact-eligible-borrowers-soon/.*

[94] Patrice Ficklin, Consumer Financial Protection Bureau, Un administrador del acuerdo de Ally en breve estará en contacto con prestatarios elegibles (June 15, 2015), *available at http://www.consumerfinance.gov/blog/un-administrador-del-acuerdo-de-ally-en-breve-estara-en-contacto-con-prestatarios-elegibles/.*

[95] Patrice Ficklin & Daniel Dodd-Ramirez, Consumer Financial Protection Bureau, Income from the Section 8 Housing Choice Voucher Homeownership Program Shouldn't Mean You Don't Qualify for a Mortgage (May 11, 2015), *available at http://www.consumerfinance.gov/blog/income-from-the-section-8-housing-choice-voucher-homeownership-program-shouldnt-mean-you-dont-qualify-for-a-mortgage/.*

[96] Patrice Ficklin, Consumer Financial Protection Bureau, We're Making Progress toward Ensuring Fair Access to Credit (April 28, 2015), *available at http://www.consumerfinance.gov/blog/were-making-progress-toward-ensuring-fair-access-to-credit/.*

7.5 *Supervisory Highlights*

Supervisory Highlights publications anchor the Bureau's efforts to communicate with supervised entities about supervisory findings. Because the Bureau's supervisory process is confidential, *Supervisory Highlights* reports provide information to all market participants on broad supervisory and market trends that the Bureau observes. In 2015, *Supervisory Highlights* covered many topical issues pertaining to fair lending, including an overview of Bureau underwriting reviews, discussion of mortgage origination policies that violate ECOA and Regulation B by failing to consider public assistance income, and settlement updates for recent enforcement actions that were originated in the supervisory process.

More information about the topics discussed this year in *Supervisory Highlights* can be found in Section 2.1 of this Report. As with all Bureau resources, all editions of *Supervisory Highlights* are available on *www.consumerfinance.gov/reports.*

8. *Interagency Reporting*

Pursuant to ECOA, the CFPB is required to file a report to Congress describing the administration of its functions under ECOA, providing an assessment of the extent to which compliance with ECOA has been achieved, and giving a summary of public enforcement actions taken by other agencies with administrative enforcement responsibilities under ECOA.[97] This section of this report provides the following information:

- A description of the CFPB's and other agencies' ECOA enforcement efforts; and
- an assessment of compliance with ECOA.

In addition, the CFPB's annual HMDA reporting requirement calls for the CFPB, in consultation with HUD, to report annually on the utility of HMDA's requirement that covered lenders itemize certain mortgage loan data.[98]

8.1 *Equal Credit Opportunity Act Enforcement*

The enforcement efforts and compliance assessments made by all the agencies assigned enforcement authority under Section 704 of ECOA are discussed in this section.

8.1.1 *Public Enforcement Actions*

In addition to the CFPB, the agencies charged with administrative enforcement of ECOA under Section 704 include: The FRB, the FDIC, the OCC, and the NCUA (collectively, the FFIEC agencies);[99] the FTC, the Farm Credit Administration (FCA), the Department of Transportation (DOT), the SEC, the Small Business Administration (SBA), and the Grain Inspection, Packers and Stockyards Administration (GIPSA) of the Department of Agriculture.[100] In 2015, CFPB had four public enforcement actions for violations of ECOA, and the FDIC issued one public enforcement action for violations of ECOA and/or Regulation B.

8.1.2 *Violations Cited During ECOA Examinations*

Among institutions examined for compliance with ECOA and Regulation B, the FFIEC agencies reported that the most frequently cited violations were:

TABLE 2—MOST FREQUENTLY CITED REGULATION B VIOLATIONS BY FFIEC AGENCIES: 2015

FFIEC Agencies reporting	Regulation B violations: 2015
CFPB, FDIC, FRB, NCUA, OCC	12 CFR 1002.4(a): Discrimination on a prohibited basis in a credit transaction. 12 CFR 1002.5(b), (d): Improperly requesting information about an applicant's race, color, religion, national origin, sex, marital status or source of income. 12 CFR 1002.6(b)(1), (b)(2), (b)(5), (b)(9): Improperly considering age, receipt of public assistance, certain other income, or another prohibited basis in a system of evaluating applicant creditworthiness. 12 CFR 1002.7(a), (d)(1): Refusing to grant an individual account to a creditworthy applicant on a prohibit basis; improperly requiring the signature of an applicant's spouse or other person. 12 CFR 1002.9(a)(1), (a)(2), (b)(1), (b)(2), (c): Failure to timely notify an applicant when an application is denied; failure to provide sufficient information in an adverse action notification, including the specific reasons the application was denied; failure to timely and/or appropriately notify an applicant of either action taken or of incompleteness after receiving an application that is incomplete. 12 CFR 1002.12(b)(1), (b)(3): Failure to preserve records on actions taken on an application or of incompleteness, and on adverse actions regarding existing accounts. 12 CFR 1002.13(a) and (b): Failure to request and collect information about the race, ethnicity, sex, marital status, and age of applicants seeking certain types of mortgage loans. 12 CFR 14(a): Failure to provide an applicant with a copy of all appraisals and other written valuations developed in connection with an application for credit that is to be secured by a first lien on a dwelling, and/or failure to provide an applicant with a notice in writing of the applicant's right to receive a copy of all written appraisals developed in connection with the application.

TABLE 3—MOST FREQUENTLY CITED REGULATION B VIOLATIONS BY OTHER ECOA AGENCIES, 2015

Other ECOA agencies	Regulation B violations: 2015
FCA	12 CFR 1002.9: Failure to timely notify an applicant when an application is denied; failure to provide sufficient information in an adverse action notification, including the specific reasons the application was denied. 12 CFR 1002.13: Failure to request and collect information about the race, ethnicity, sex, marital status, and age of applicants seeking certain types of mortgage loans.

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[97] 15 U.S.C. 1691f.

[98] 12 U.S.C. 2807.

[99] The FFIEC is a "formal interagency body empowered to prescribe uniform principles, standards, and report forms for the federal examination of financial institutions" by the member agencies listed above and the State Liaison Committee "and to make recommendations to promote uniformity in the supervision of financial institutions." Federal Financial Institutions Examination Council, *http://www.ffiec.gov* (last visited Jan. 26, 2016).

[100] 15 U.S.C. 1691c.

The GIPSA, the SEC, and the SBA reported that they received no complaints based on ECOA or Regulation B in 2015. In 2015, the DOT reported that it received a "small number of consumer inquiries or complaints concerning credit matters possibly covered by ECOA," which it "processed informally." The FTC is an enforcement agency and does not conduct compliance examinations.

8.2 Referrals to the Department of Justice

In 2015, the FFIEC agencies including the CFPB referred a total of 16 matters to the DOJ. The FDIC referred four matters to the DOJ. These matters alleged discriminatory treatment of persons in credit transactions due to protected characteristics, including race, national origin, marital status and receipt of public assistance income. The FRB referred four matters to the DOJ. These matters alleged discriminatory treatment of persons in credit transactions due to protected characteristics, including race, national origin, and marital status. The CFPB referred eight matters to the DOJ during 2015, finding discrimination in credit transactions on the following prohibited bases: Race, color, national origin, age, receipt of public assistance income, sex, and marital status.

8.3 Reporting on the Home Mortgage Disclosure Act

The CFPB's annual HMDA reporting requirement calls for the CFPB, in consultation with the Department of Housing and Urban Development (HUD), to report annually on the utility of HMDA's requirement that covered lenders itemize in order to disclose the number and dollar amount of certain mortgage loans and applications, grouped according to various characteristics.[101] The CFPB, in consultation with HUD, finds that itemization and tabulation of these data further the purposes of HMDA. For more information on the Bureau's proposed amendments to HMDA's implementing regulation, Regulation C, please see the Rulemaking section of this report (Section 4).

9. Conclusion

In this, our fourth Fair Lending Report to Congress, we outline our work in furtherance of our Congressional mandate to ensure fair, equitable, and nondiscriminatory access to credit. Our multipronged approach uses every tool at our disposal—supervision, enforcement, rulemaking, outreach, research, data-driven prioritization, interagency coordination, and more. We are proud to present this report as we continue to fulfill our Congressional mandate as well as the Bureau's mission to help consumer finance markets work by making rules more effective, by consistently and fairly enforcing these rules, and by empowering consumers to take more control over their economic lives.

Appendix A: Defined Terms

Term	Definition
Bureau	The Consumer Financial Protection Bureau.
CFPB	The Consumer Financial Protection Bureau.
CMS	Compliance Management System.
Dodd-Frank Act	The Dodd-Frank Wall Street Reform and Consumer Protection Act.
DOJ	The U.S. Department of Justice.
DOT	The U.S. Department of Transportation.
ECOA	The Equal Credit Opportunity Act.
FCA	Farm Credit Administration.
FDIC	The U.S. Federal Deposit Insurance Corporation.
Federal Reserve Board	The U.S. Board of Governors of the Federal Reserve System.
FFIEC	The U.S. Federal Financial Institutions Examination Council—the FFIEC member agencies are the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), and the Consumer Financial Protection Bureau (CFPB). The State Liaison Committee was added to FFIEC in 2006 as a voting member.
FRB	The U.S. Board of Governors of the Federal Reserve System.
FTC	The U.S. Federal Trade Commission.
GIPSA	Grain Inspection, Packers and Stockyards Administration (GIPSA) of the U.S. Department of Agriculture.
HMDA	The Home Mortgage Disclosure Act.
HUD	The U.S. Department of Housing and Urban Development.
LEP	Limited English Proficiency.
LGBT	Lesbian, gay, bisexual and transgender.
NCUA	The National Credit Union Administration.
OCC	The U.S. Office of the Comptroller of the Currency.
SBA	Small Business Administration.
SEC	U.S. Securities and Exchange Commission.

[2]. Regulatory Requirements

This Fair Lending Report of the Consumer Financial Protection Bureau summarizes existing requirements under the law, and summarizes findings made in the course of exercising the Bureau's supervisory and enforcement authority. It is therefore exempt from notice and comment rulemaking requirements under the Administrative Procedure Act pursuant to 5 U.S.C. 553(b). Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis. 5 U.S.C. 603(a), 604(a). The Bureau has determined that this Fair Lending Report does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring OMB approval under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*

Dated: April 29, 2016.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2016–11138 Filed 5–11–16; 8:45 am]

BILLING CODE 4810–AM–P

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[101] *See* 12 U.S.C. 2807.

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings Notice

TIME AND DATE: Wednesday May 18, 2016, 2:00 p.m.–4:00 p.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Commission Meeting—Open to the Public.

Matter To Be Considered

Decisional Matter: Fiscal Year 2016 Midyear Review and Proposed Operating Plan Adjustments

A live webcast of the Meeting can be viewed at *www.cpsc.gov/live.*

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: May 10, 2016.

Todd A. Stevenson,

Secretariat.

[FR Doc. 2016–11341 Filed 5–10–16; 4:15 pm]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

U.S. Air Force Scientific Advisory Board Notice of Meeting

AGENCY: Department of the Air Force, Air Force Scientific Advisory Board, DOD.

ACTION: Meeting notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the United States Air Force (USAF) Scientific Advisory Board (SAB) Summer Board meeting will take place on 15 June 2016 at the Arnold & Mabel Beckman Center, located at 100 Academy Drive in Irvine, CA 92617. The meeting will occur from 8:00 a.m.–4:00 p.m. on Wednesday, 15 June 2016. The session that will be open to the *general public* will be held from 8:30 a.m. to 9:00 a.m. on 15 June 2016. The purpose of this Air Force Scientific Advisory Board quarterly meeting is to finalize FY16 SAB studies, which consist of: Data Analytics to Support Operational Decision Making (DAN), Responding to Uncertain or Adaptive Threats in Electronic Warfare (AEW), and Airspace Surveillance to Support A2/AD Operations (ASV). In accordance with 5 U.S.C. 552b, as amended, and 41 CFR 102–3.155, a number of sessions of the USAF SAB Summer Board meeting will be closed to the general public because they will discuss classified information and matters covered by Section 552b of Title 5, United States Code, subsection (c), subparagraph (1).

Any member of the public that wishes to attend this meeting or provide input to the USAF SAB must contact the SAB meeting organizer at the phone number or email address listed in this announcement at least five working days prior to the meeting date. Please ensure that you submit your written statement in accordance with 41 CFR 102–3.140(c) and section 10(a)(3) of the Federal Advisory Committee Act. Statements being submitted in response to the agenda mentioned in this notice must be received by the SAB meeting organizer at least five calendar days prior to the meeting commencement date. The SAB meeting organizer will review all timely submissions and respond to them prior to the start of the meeting identified in this noice. Written statements received after this date may not be considered by the SAB until the next scheduled meeting.

FOR FURTHER INFORMATION CONTACT: The SAB meeting organizer, Major Mike Rigoni at *michael.j.rigoni.mil@mail.mil* or 240–612–5504, United States Air Force Scientific Advisory Board, 1500 West Perimeter Road, Ste. #3300, Joint Base Andrews, MD 20762.

Henry Williams,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2016–11176 Filed 5–11–16; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2016–ICCD–0055]

Agency Information Collection Activities; Comment Request; Study of Digital Learning Resources for Instructing English Learner Students

AGENCY: Office of Planning, Evaluation and Policy Development (OPEPD), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before July 11, 2016.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0055. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E–103, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Julie Warner, 202–453–6043.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Study of Digital Learning Resources for Instructing English Learner Students.

OMB Control Number: 1875–NEW.

Type of Review: A new information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 3,540.

Total Estimated Number of Annual Burden Hours: 2,657.

Abstract: This study will examine the use of digital learning resources (DLRs) to support the English language acquisition and academic achievement of English learners (ELs) in K–12 education. The goal of this study is to provide an understanding of the current use of DLRs for instructing EL students in order to inform further research and policy development efforts.

Dated: May 9, 2016.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–11194 Filed 5–11–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2016–ICCD–0027]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; National Student Loan Data System (NSLDS)

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before June 13, 2016.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0027. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E–103, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Valerie Sherrer, 202–377–3547.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: National Student Loan Data System (NSLDS).

OMB Control Number: 1845–0035.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: State, Local, and Tribal Governments; Private Sector.

Total Estimated Number of Annual Responses: 28,188.

Total Estimated Number of Annual Burden Hours: 60,798.

Abstract: The United States Department of Education will collect data through the National Student Loan Data System from Federal Perkins Loan holders (or their servicers) and Guaranty Agencies (GA) about Federal Perkins, Federal Family Education, and William D. Ford Direct Student Loans to be used to manage the federal student loan programs, develop policy, and determine eligibility for programs under title IV of the Higher Education Act of 1965, as amended (HEA).

Dated: May 9, 2016.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–11195 Filed 5–11–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2016–ICCD–0054]

Agency Information Collection Activities; Comment Request; Evaluation of the ESSA Title I, Part D, Neglected or Delinquent Programs

AGENCY: Office of Planning, Evaluation and Policy Development (OPEPD), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before July 11, 2016.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0054. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E–103, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Michael Fong, 202–401–7462.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Evaluation of the ESSA Title I, Part D, Neglected or Delinquent Programs.

OMB Control Number: 1875–NEW.

Type of Review: A new information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 502.

Total Estimated Number of Annual Burden Hours: 392.

Abstract: The purpose of this study is to examine how state agencies, school districts, and juvenile justice and child welfare facilities implement education and transition programs for youth who are neglected or delinquent (N or D) under the Elementary and Secondary Education Act (ESEA), as amended by the Every Student Succeeds Act (ESSA), Title I, Part D. The information will be used by ED to produce and disseminate a report detailing how state agencies, school districts, and juvenile justice and child welfare facilities implement education and transition programs for youth who are neglected or delinquent (N or D).

Dated: May 9, 2016.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–11193 Filed 5–11–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2299–000]

Turlock Irrigation District; Modesto Irrigation District; Notice of Authorization for Continued Project Operation

On April 28, 2014 Turlock Irrigation District and Modesto Irrigation District, licensees for the Don Pedro Hydroelectric Project, filed an Application for a New License pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. The Don Pedro Hydroelectric Project facilities are located on the Tuolumne River in Tuolumne County, California.

The license for Project No. 2299 was issued for a period ending April 30, 2016. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2299 is issued to the licensee for a period effective May 1, 2016 through April 30, 2017 or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before April 30, 2017, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that the licensee, Turlock Irrigation District and Modesto Irrigation District, is authorized to continue operation of the Don Pedro Hydroelectric Project, until such time as the Commission acts on its application for a subsequent license.

Dated: May 5, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–11221 Filed 5–11–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP16–618–000]

Algonquin Gas Transmission, LLC; Supplemental Notice of Technical Conference

As announced in the Notice of Technical Conference issued on April 15, 2016 in the above-captioned proceeding, a technical conference will be held in this proceeding on Monday, May 9, 2016, beginning at 10:00 a.m. and ending at approximately 3:30 p.m., at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. The purpose of the technical conference is to examine the issues raised in the protests and comments regarding the February 19, 2016 filing made by Algonquin Gas Transmission, LLC (Algonquin). In that filing, Algonquin proposed to exempt from the capacity release bidding requirements certain types of capacity releases of firm transportation by electric distribution companies that are participating in state-regulated electric reliability programs.[1] Issues to be examined at the technical conference include concerns raised regarding the basis and need for the waiver.

The agenda for this technical conference is attached. Due to the number of parties requesting to make presentations, each presentation will be limited to fifteen minutes to provide sufficient time for discussion. We have allotted time between each presentation for questions and comments from staff, panelists, and the audience. Parties may file in this docket longer presentations or other materials prior to the technical conference. A schedule for post-technical comments will be established at the technical conference.

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[1] *Algonquin Gas Transmission, LLC,* 154 FERC ¶ 61,269 (2016).

For more information about this technical conference, please contact Anna Fernandez at *Anna.Fernandez@ferc.gov* or (202) 502–6682. For information related to logistics, please contact Sarah McKinley at *Sarah.Mckinley@ferc.gov* or (202) 502–8368.

Dated: May 5, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–11222 Filed 5–11–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14769–000]

Green Canyon Energy, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On March 14, 2016, Green Canyon Energy, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Eagle Creek Hydroelectric Project (Eagle Creek Project or project) to be located on Eagle Creek, in Lane County, Oregon. The proposed project boundary will occupy approximately 14.5 acres of federal land within the Willamette National Forest. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following new features: (1) A 40-foot-long, 9.5-foot-high concrete diversion weir traversing Eagle Creek; (2) an approximately 0.7 acre-foot impoundment; (3) an approximately 11,470-foot-long, 36-inch-diameter polyvinyl chloride pipe penstock; (4) a 50-foot-long, 40-foot-wide concrete powerhouse; (5) one Pelton turbine/generator with a total installed capacity of 7.0-megawatts; (6) a tailrace comprised of a 50-foot-long, 60-inch steel pipe and a 350-foot-long and 25-foot-wide rip-rapped channel discharging flows from the powerhouse back to Eagle Creek; (7) an approximately 3,960-foot-long, 12.4-kilovolt (kV) transmission line interconnecting with the existing Blachly-Lane Electric Cooperative transmission line; and (8) appurtenant facilities. The estimated annual generation of the Eagle Creek Project would be 50 gigawatt-hours.

Applicant Contact: Mr. Mark A. Mikkelsen, 275 Knight Avenue, Eugene, Oregon 97404; phone: (541) 520–2233.

FERC Contact: Karen Sughrue; phone: (202) 502–8556.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–14769–000.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14769) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: May 5, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–11220 Filed 5–11–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF16–4–000]

Columbia Gas Transmission, LLC; Notice of Intent To Prepare an Environmental Assessment for the Planned B-System Project and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the B-System Project involving abandonment, construction, and operation of facilities by Columbia Gas Transmission, LLC (Columbia) in Fairfield and Franklin Counties, Ohio. The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the EA. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before June 6, 2016.

If you sent comments on this project to the Commission before the opening of this docket on March 10, 2016, you will need to file those comments in Docket No. PF16–4–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this planned project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the planned facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" is available for viewing on the FERC Web site (*www.ferc.gov*). This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings.

Public Participation

For your convenience, there are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov*. Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings*. This is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings*. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on "*eRegister*." If you are filing a comment on a particular project, please select "Comment on a Filing" as the filing type; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket number (PF16–4–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Summary of the Planned Project

Columbia plans to abandon pipeline and appurtenant aboveground facilities as well as construct replacement and new pipeline and appurtenant aboveground facilities in Franklin and Fairfield Counties, Ohio. The project would replace aging infrastructure and construct new facilities as a part of Columbia's proposed Modernization II Program, which would allow Columbia to achieve compliance with emerging regulations and meet current and future service requirements.

The B-System Project would:

- Abandon in place approximately 17.5 miles of 20-inch-diameter pipeline and remove two associated mainline valves (mileposts 7.7 and 10.9) on Columbia's Line B–105;
- construct approximately 14.0 miles of 20-inch-diameter replacement pipeline, and construct one new bi-directional pig[1] launcher/receiver (milepost 0.0) and mainline valve (milepost 7.0) on Columbia's Line B–111;
- replace approximately 0.1 mile of 4-inch-diameter pipeline on Columbia's Line B–121;
- replace approximately 0.5 mile of 4-inch-diameter pipeline on Columbia's Line B–130; and
- construct approximately 7.6 miles of new 20-inch-diameter pipeline ("Line K–270") connecting Columbia's K-System to its B-System, one pig launcher and tie-in piping (milepost 0.0), and one pig receiver, tie-in piping, gas heater, and regulation facility (milepost 7.6).

The general location of the project facilities is shown in appendix 1.[2]

Land Requirements for Construction

Columbia's planned abandonment and construction activities would disturb about 387.6 acres of land. Following construction, Columbia would utilize and maintain about 147.5 acres for permanent operation of the new and replacement facilities.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[3] to discover and address concerns the public may have about proposals. This process is referred to as scoping. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all filed comments during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the planned project under these general headings:

- Geology and soils;
- land use;
- water resources, fisheries, and wetlands;
- cultural resources;
- vegetation and wildlife;
- air quality and noise;
- endangered and threatened species;
- public safety; and
- cumulative impacts.

We will also evaluate possible alternatives to the planned project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Although no formal application has been filed, we have already initiated our NEPA review under the Commission's pre-filing process. The purpose of the pre-filing process is to encourage early involvement of interested stakeholders and to identify and resolve issues before the FERC receives an application. As part of our pre-filing review, we have begun to contact some federal and state agencies to discuss their involvement in the scoping process and the preparation of the EA.

The EA will present our independent analysis of the issues. The EA will be available in the public record through eLibrary. Depending on the comments received during the scoping process, we may also publish and distribute the EA to the public for an allotted comment period. We will consider all comments on the EA before we make our recommendations to the Commission. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section, beginning on page 2.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues related to this project to formally cooperate with us in the preparation of the EA.[4] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

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[1] A "pig" is a tool that the pipeline company inserts into and pushes through the pipeline for cleaning the pipeline, conducting internal inspections, or other purposes.

[2] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called "eLibrary" or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[3] "We," "us," and "our" refer to the environmental staff of the Commission's Office of Energy Projects.

[4] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with the applicable State Historic Preservation Office(s), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[5] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO(s) as the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the planned project.

If we publish and distribute the EA, copies of the EA will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (appendix 2).

Becoming an Intervenor

Once Columbia files its application with the Commission, you may want to become an "intervenor" which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Motions to intervene are more fully described at *http://www.ferc.gov/resources/guides/how-to/intervene.asp.* Instructions for becoming an intervenor are in the "Document-less Intervention Guide" under the "e-filing" link on the Commission's Web site. Please note that the Commission will not accept requests for intervenor status at this time. You must wait until the Commission receives a formal application for the project.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.,* PF16–4). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: May 6, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–11192 Filed 5–11–16; 8:45 am]

BILLING CODE 6717–01–P

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[5] The Advisory Council on Historic Preservation regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL00–95–288]

San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange; Notice of Compliance Filing

Take notice that on May 5, 2016, the California Power Exchange Corporation submitted its Refund Rerun Compliance Filing pursuant to the Federal Energy Regulatory Commission's (Commission) July 15, 2011 Order Accepting Compliance Filings and Providing Guidance.[1]

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

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[1] *San Diego Gas & Elec. Co.* v. *Sellers of Energy and Ancillary Servs.,* 136 FERC ¶ 61,036 (2011).

Comment Date: 5:00 p.m. Eastern Time on May 26, 2016.

Dated: May 6, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–11191 Filed 5–11–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 7518–018]

Erie Boulevard Hydropower, L.P. and Saint Regis Mohawk Tribe; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed Erie Boulevard Hydropower, L.P. and Saint Regis Mohawk Tribe's (licensees) Environmental Analysis, filed with the Commission on April 28, 2016, regarding the proposed surrender of project license for the Hogansburg Hydroelectric Project. The project is located on the St Regis River in Franklin County, New York. The project does not occupy any federal lands.

After independent review of the licensees' Environmental Analysis, Commission staff has decided to adopt it and issue it as staff's Environmental Assessment (EA). The EA analyzes the potential environmental impacts of decommissioning project facilities, including dam removal, and the surrender of the project license. The EA includes proposed mitigation measures and concludes that granting the proposed surrender would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is on file with the Commission and is available for public inspection. The EA may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number (P–7518) in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or call toll-free at 1–866–208–3676 or (202) 502–8659 (for TTY).

A copy of the EA may also be accessed using this link: *http://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=14226917.*

You may also register online at *http://www.ferc.gov/docs-filing/esubsription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

All comments must be filed within 30 days of the date of this notice and should reference Project No. 7518–018. The Commission strongly encourages electronic filing. Please file comments using the Commission's efiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. In lieu of electronic filing, please send a paper copy to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

For further information, contact Mo Fayyad at (202) 502–8759 or *mo.fayyad@ferc.gov.*

Dated: May 5, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–11229 Filed 5–11–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP15–138–000]

Transcontinental Gas Pipe Line Company, LLC; Notice of Availability of the Draft Environmental Impact Statement for the Proposed Atlantic Sunrise Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a draft environmental impact statement (EIS) for the Atlantic Sunrise Project, proposed by Transcontinental Gas Pipe Line Company, LLC (Transco) in the above-referenced docket. Transco requests authorization to expand its existing pipeline system from the Marcellus Shale production area in northern Pennsylvania to deliver an incremental 1.7 million dekatherms per day of year-round firm transportation capacity to its existing southeastern market areas.

The draft EIS assesses the potential environmental effects of the construction and operation of the project in accordance with the requirements of the National Environmental Policy Act. The FERC staff concludes that approval of the project would result in some adverse environmental impacts; however, most of these impacts would be reduced to less-than-significant levels with the implementation of Transco's proposed mitigation and the additional measures recommended in the draft EIS.

The U.S. Army Corps of Engineers participated as a cooperating agency in the preparation of the EIS. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposal and participate in the National Environmental Policy Act analysis. Although the U.S. Army Corps of Engineers provided input to the conclusions and recommendations presented in the draft EIS, the agency will present its own conclusions and recommendations in its respective record of decision or determination for the project.

The draft EIS addresses the potential environmental effects of the construction and operation of about 197.7 miles of pipeline composed of the following facilities:

- 183.7 miles of new 30- and 42-inch-diameter natural gas pipeline in Pennsylvania;
- 11.5 miles of new 36- and 42-inch-diameter pipeline looping in Pennsylvania;
- 2.5 miles of 30-inch-diameter replacements in Virginia; and
- associated equipment and facilities.

The project's proposed aboveground facilities include two new compressor stations in Pennsylvania; additional compression and related modifications to three existing compressor stations in Pennsylvania and Maryland; two new meter stations and three new regulator stations in Pennsylvania; and minor modifications at existing aboveground facilities at various locations in Pennsylvania, Virginia, North Carolina, and South Carolina to allow for bi-directional flow and the installation of supplemental odorization, odor detection, and/or odor masking/deodorization equipment.

The FERC staff mailed copies of the draft EIS to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; newspapers and libraries in the project area; and parties to this proceeding. Paper copy versions of this EIS were mailed to those specifically requesting them; all others received a CD version. In addition, the draft EIS is available for public viewing on the FERC's Web site (*www.ferc.gov*) using the eLibrary link. A limited number of copies are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Any person wishing to comment on the draft EIS may do so. To ensure consideration of your comments on the proposal in the final EIS, it is important that the Commission receive your comments on or before June 27, 2016.

For your convenience, there are four methods you can use to submit your comments to the Commission. In all instances, please reference the project docket number (CP15–138–000) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You can file your comments electronically using the eComment feature on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. This is an easy method for submitting brief, text-only comments on a project.

(2) You can file your comments electronically by using the eFiling feature on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on "eRegister." If you are filing a comment on a particular project, please select "Comment on a Filing" as the filing type.

(3) You can file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

(4) In lieu of sending written or electronic comments, the Commission invites you to attend one of the public comment meetings its staff will conduct in the project area to receive comments on the draft EIS. We[1] encourage interested groups and individuals to attend and present oral comments on the draft EIS. We will begin our sign up of speakers at 6:30 p.m. All meetings will begin at 7:00 p.m. and are scheduled as follows:

Date	Location
June 13, 2016	Manheim Township High School, 115 Blue Streak Boulevard, Lancaster, PA 17601, (717) 560–3098.
June 14, 2016	Lebanon Valley College, Lutz Auditorium, 101 N. College Avenue, Annville, PA 17003, (717) 867–6310.
June 15, 2016	Bloomsburg University, Haas Center for the Arts—Mitrani Hall, 400 E. Second Street, Bloomsburg, PA 17815, (570) 389–4291.
June 16, 2016	Lake Lehmon High School, 1128 Old Route 115, Dallas, PA 18612, (570) 255–2705.

The Baltimore District of the U.S. Army Corps of Engineers will participate (jointly with FERC) in the public comment meetings to gather information on this proposal to assist them in the review of the permit application for the proposed activity.

The joint comment meetings will begin at 7:00 p.m. with a description of our environmental review process by Commission staff, after which speakers will be called. The meetings will end once all speakers have provided their comments or at 10:30 p.m., whichever comes first. Please note that there may be a time limit of three minutes to present comments, and speakers should structure their comments accordingly. If time limits are implemented, they will be strictly enforced to ensure that as many individuals as possible are given an opportunity to comment. The meetings will be recorded by a court reporter to ensure comments are accurately recorded. Transcripts will be entered into the formal record of the Commission proceeding.

Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (Title 18 Code of Federal Regulations Part 385.214).[2] Only intervenors have the right to seek rehearing of the Commission's decision. The Commission grants affected landowners and others with environmental concerns intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding that no other party can adequately represent. Simply filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered.

Questions?

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on "General Search," and enter the docket number excluding the last three digits in the Docket Number field (*i.e.,* CP15–138). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676; for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *http://www.ferc.gov/docs-filing/esubscription.asp.*

Dated: May 5, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–11223 Filed 5–11–16; 8:45 am]

BILLING CODE 6717–01–P

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[1] "We," "us," and "our" refer to the environmental staff of the FERC's Office of Energy Projects.

[2] See the previous discussion on the methods for filing comments.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Staff Notice of Alleged Violations

Take notice[1] that in a nonpublic investigation pursuant to 18 CFR part 1b (2015), the staff of the Office of Enforcement of the Federal Energy Regulatory Commission has preliminary determined that Saracen Energy Midwest, LP, violated Southwest Power Pool, Inc.'s Open Access Transmission Tariff, Attachment AE, 7.4.1(4), by submitting bids for Transmission Congestion Rights at Electronically Equivalent Settlement Locations between August 2014 and March 2015.

This Notice does not confer a right on third parties to intervene in the investigation or any other right with respect to the investigation.

Dated: May 6, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–11224 Filed 5–11–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12966–004]

Utah Board of Water Resources; Notice of Application Tendered for Filing With the Commission and Establishing Procedural Schedule for Licensing and Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Major Unconstructed License.

b. *Project No.:* 12966–004.

c. *Date Filed:* May 2, 2016.

d. *Applicant:* Utah Board of Water Resources.

e. *Name of Project:* Lake Powell Pipeline Project.

f. *Location:* In Washington and Kane counties, Utah, and in Coconino and Mohave counties, Arizona. The project would occupy 449 acres of federal land managed by the Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Bill Leeflang, Project Manager, Utah Division of Water Resources; Telephone (801) 538–7293 or *billleeflang@utah.gov.*

i. *FERC Contact:* Jim Fargo, (202) 502–6095 or *james.fargo@ferc.gov.*

j. This application is not ready for environmental analysis at this time.

k. The proposed Lake Powell Pipeline Project would consist of: (1) 140 miles of 69-inch-diameter pipeline and penstock, (2) a combined conventional peaking and pumped storage hydro station, (3) four conventional in-pipeline hydro stations, (4) a conventional hydro station, and (4) transmission lines.

The proposed project's water intake would convey water from the Bureau of Reclamation's Lake Powell up to a high point within the Grand Staircase-Escalante National Monument, after which it would flow through a series of hydroelectric turbines, ending at Sand Hollow reservoir, near St. George, Utah.

The energy generation components of the proposed project would include: (1) An inline single-unit, 1-megawatt (MW) facility at Hydro Station 1 in the Grand Staircase-Escalante National Monument; (2) an inline single-unit, 1.7–MW facility at Hydro Station 2 east of Colorado City, Arizona; (3) an inline single-unit, 1–MW facility in Hildale City, Utah; (4) an inline single-unit, 1.7–MW facility above the Hurricane Cliffs forebay reservoir; (5) a 2-unit, 300–MW (150–MW each unit) hydroelectric pumped storage development at Hurricane Cliffs, with the forebay and afterbay sized to provide ten hours of continuous 300–MW output; (6) a single-unit, 35–MW conventional energy recovery generation unit built within the Hurricane Cliffs development; and (7) a single-unit, 5–MW facility at the existing Sand Hollow Reservoir.

l. *Locations of the Application:* A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). A copy is also available for inspection and reproduction at the address in item (h) above.

m. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *Procedural Schedule:*

The application will be processed according to the following preliminary Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Notice of Acceptance/Notice of Ready for Environmental Analysis	January 2017.
Filing of recommendations, preliminary terms and conditions	March 2017.
Commission issues Draft Environmental Impact Statement (DEIS)	September 2017.
Comments on DEIS	November 2017.
Modified terms and conditions	January 2018.
Commission issues Final EIS	April 2018.

o. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: May 6, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–11226 Filed 5–11–16; 8:45 am]

BILLING CODE 6717–01–P

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[1] *Enforcement of Statutes, Regulations, and Orders,* 129 FERC ¶ 61,247 (2009), *order on reh'g,* 134 FERC ¶ 61,054 (2011).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2651–049]

Indiana Michigan Power Company; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Recreation Plan Amendment.

b. *Project No:* 2651–049.

c. *Date Filed:* April 18, 2016.

d. *Applicant:* Indiana Michigan Power Company.

e. *Name of Project:* Elkhart Hydroelectric Project.

f. *Location:* The project is located on the St. Joseph River in the City of Elkhart and Elkhart County, Indiana.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Ms. Elizabeth Parcell, Process Supervisor Senior, Indiana Michigan Power Company, 40 Franklin Road SW., Roanoke, VA 24011, (540) 984–2441.

i. *FERC Contact:* Mr. Kevin Anderson, (202) 502–6465, *kevin.anderson@ferc.gov.*

j. Deadline for filing comments, motions to intervene, and protests: June 6, 2016.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–2651–049.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The licensee proposes to revise the project's recreation plan to incorporate a modification made in 2015 to the canoe portage take-out. Specifically, the licensee, with assistance from the City of Elkhart, constructed a concrete boat loading/unloading area within the right-of-way of Beardsley Avenue that enables the take-out to function better as an independent boat launch. Aside from the new loading/unloading area, other aspects of the current recreation plan would remain the same.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: May 6, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–11225 Filed 5–11–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC16–115–000.

Applicants: Antelope Big Sky Ranch LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act for the Disposition of Jurisdictional Facilities, Request for Expedited Consideration and Confidential Treatment of Antelope Big Sky Ranch LLC.

Filed Date: 5/6/16.

Accession Number: 20160506–5104.

Comments Due: 5 p.m. ET 5/27/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2721–006.

Applicants: El Paso Electric Company.

Description: Supplement to December 31, 2015 Updated Market Power Analysis of El Paso Electric Company.

Filed Date: 5/5/16.

Accession Number: 20160505–5283.

Comments Due: 5 p.m. ET 5/26/16.

Docket Numbers: ER11–4625–002; ER13–2169–001; ER13–1504–002; ER11–3634–002; ER10–2867–002; ER10–2866–001; ER10–2862–002; ER10–2861–001.

Applicants: Colton Power L.P., Goal Line L.P., SWG Arapahoe, LLC, KES Kingsburg, L.P., Valencia Power, LLC, SWG Colorado, LLC, Harbor

Cogeneration Co., Fountain Valley Power, LLC.

Description: Amendment to March 17, 2016 Notice of Change in Status of the Southwest Generation Operating Company, LLC public utility subsidiaries, et al.

Filed Date: 5/4/16.

Accession Number: 20160504–5219.

Comments Due: 5 p.m. ET 5/25/16.

Docket Numbers: ER12–1587–002.

Applicants: Northeastern Power Company.

Description: Compliance filing: Informational Filing Regarding Planned Transfer to be effective N/A.

Filed Date: 5/5/16.

Accession Number: 20160505–5216.

Comments Due: 5 p.m. ET 5/26/16.

Docket Numbers: ER14–1218–001.

Applicants: Armstrong Power, LLC.

Description: Compliance filing: Informational Filing Regarding Planned Transfer to be effective N/A.

Filed Date: 5/5/16.

Accession Number: 20160505–5217.

Comments Due: 5 p.m. ET 5/26/16.

Docket Numbers: ER16–1051–000; *ER16–1051–001.*

Applicants: Graphic Packaging International Inc.

Description: Supplement to March 1, 2016 and April 28, 2016 Graphic Packaging International Inc. tariff filing.

Filed Date: 5/5/16.

Accession Number: 20160505–5278.

Comments Due: 5 p.m. ET 5/26/16.

Docket Numbers: ER16–1454–001.

Applicants: Southern California Edison Company.

Description: Tariff Amendment: Resubmit Amended DSA w/SCE's Power Production Department to be effective 1/1/2016.

Filed Date: 5/5/16.

Accession Number: 20160505–5162.

Comments Due: 5 p.m. ET 5/26/16.

Docket Numbers: ER16–1628–000.

Applicants: Monongahela Power Company, Trans-Allegheny Interstate Line Company, The Potomac Edison Company, American Transmission Systems, Incorporation, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: ATSI et al submits Service Agreement Nos. 4090, 4441, 4442, 4443 to be effective 7/4/2016.

Filed Date: 5/5/16.

Accession Number: 20160505–5205.

Comments Due: 5 p.m. ET 5/26/16.

Docket Numbers: ER16–1629–000.

Applicants: Arizona Public Service Company.

Description: § 205(d) Rate Filing: Service Agreement No. 209—Four Corners Acquisition to be effective 7/6/2016.

Filed Date: 5/5/16.

Accession Number: 20160505–5225.

Comments Due: 5 p.m. ET 5/26/16.

Docket Numbers: ER16–1630–000.

Applicants: Arizona Public Service Company.

Description: § 205(d) Rate Filing: Rate Schedule Nos. 44, 98, 211—Four Corners Acquisition to be effective 7/6/2016.

Filed Date: 5/5/16.

Accession Number: 20160505–5226.

Comments Due: 5 p.m. ET 5/26/16.

Docket Numbers: ER16–1631–000.

Applicants: Armstrong Power, LLC, Calumet Energy Team, LLC, Northeastern Power Company, Pleasants Energy, LLC, Troy Energy, LLC.

Description: Joint Request for Waiver of Armstrong Power, LLC, et. al.

Filed Date: 5/4/16.

Accession Number: 20160504–5223.

Comments Due: 5 p.m. ET 5/25/16.

Docket Numbers: ER16–1632–000.

Applicants: Calumet Energy Team, LLC.

Description: Compliance filing: Informational Filing Regarding Planned Transfer to be effective N/A.

Filed Date: 5/6/16.

Accession Number: 20160506–5091.

Comments Due: 5 p.m. ET 5/27/16.

Docket Numbers: ER16–1633–000.

Applicants: Pleasants Energy, LLC.

Description: Compliance filing: Informational Filing Regarding Planned Transfer to be effective N/A.

Filed Date: 5/6/16.

Accession Number: 20160506–5093.

Comments Due: 5 p.m. ET 5/27/16.

Docket Numbers: ER16–1634–000.

Applicants: Troy Energy, LLC.

Description: Compliance filing: Informational Filing Regarding Planned Transfer to be effective N/A.

Filed Date: 5/6/16.

Accession Number: 20160506–5094.

Comments Due: 5 p.m. ET 5/27/16.

Docket Numbers: ER16–1635–000.

Applicants: Arizona Public Service Company.

Description: § 205(d) Rate Filing: Rate Schedule No. 281 to be effective 7/6/2016.

Filed Date: 5/6/16.

Accession Number: 20160506–5101.

Comments Due: 5 p.m. ET 5/27/16.

Docket Numbers: ER16–1636–000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: Ekdorado-Moenkopi 500kV Transmission Line IA with APS to be effective 7/7/2016.

Filed Date: 5/6/16.

Accession Number: 20160506–5124.

Comments Due: 5 p.m. ET 5/27/16.

Docket Numbers: ER16–1637–000.

Applicants: UIL Distributed Resources, LLC.

Description: Baseline eTariff Filing: Application for MBR Authority & Request for Related Waivers & Blanket Approval to be effective 5/7/2016.

Filed Date: 5/6/16.

Accession Number: 20160506–5174.

Comments Due: 5 p.m. ET 5/27/16.

Docket Numbers: ER16–1638–000.

Applicants: 4C Acquisition, LLC.

Description: Baseline eTariff Filing: Baseline FERC Electric Tariff to be effective 7/6/2016.

Filed Date: 5/6/16.

Accession Number: 20160506–5181.

Comments Due: 5 p.m. ET 5/27/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 6, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–11190 Filed 5–11–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC16–6–000]

Commission Information Collection Activities (FERC–725J); Comment Request

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Comment request.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(a)(1)(D), the Federal Energy Regulatory Commission (Commission or FERC) is submitting its information collection FERC–725J (Definition of the

Bulk Electric System) to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission previously issued a Notice in the **Federal Register** (81 FR 9179, 2/24/2016) requesting public comments. The Commission received no comments on the FERC–725J and is making this notation in its submittal to OMB.

NOTE: Commission staff has revised the burden table, added an information collection requirement, and revised the burden estimate.

DATES: Comments on the collection of information are due by June 13, 2016.

ADDRESSES: Comments filed with OMB, identified by the OMB Control No. 1902–0259, should be sent via email to the Office of Information and Regulatory Affairs: *oira_submission@omb.gov.* Attention: Federal Energy Regulatory Commission Desk Officer. The Desk Officer may also be reached via telephone at 202–395–0710.

A copy of the comments should also be sent to the Commission, in Docket No. IC16–6–000, by either of the following methods:

- *eFiling at Commission's Web site: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* by telephone at (202) 502–8663, and by fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC–725J, Definition of the Bulk Electric System.

OMB Control No.: 1902–0259.

Type of Request: Three-year extension of the FERC–725J information collection requirements with no changes to the reporting requirements.

Abstract: On December 20, 2012, the Commission issued Order No. 773, a Final Rule approving NERC's modifications to the definition of "bulk electric system" and the Rules of Procedure exception process to be effective July 1, 2013. On April 18, 2013, in Order No. 773–A, the Commission largely affirmed its findings in Order No. 773. In Order Nos. 773 and 773–A, the Commission directed NERC to modify the definition of bulk electric system in two respects: (1) Modify the local network exclusion (exclusion E3) to remove the 100 kV minimum operating voltage to allow systems that include one or more looped configurations connected below 100 kV to be eligible for the local network exclusion; and (2) modify the exclusions to ensure that generator interconnection facilities at or above 100 kV connected to bulk electric system generators identified in inclusion I2 are not excluded from the bulk electric system.

Type of Respondents: Generator owners, distribution providers, other NERC-registered entities.

Estimate of Annual Burden:[1] The Commission estimates the annual public reporting burden[2] for the information collection as:

FERC–725J

[Definition of the bulk electric system]

	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden and cost per response (4)	Total annual burden hours and total annual cost (3) * (4) = (5)	Cost per respondent ($) (5) ÷ (1)
Generator Owners, Distribution Providers, and Transmission Owners (Exception Request).	20	1	20	94 hrs.; $4,978[3]	1,880 hrs.; $99,560.	$4,978
All Registered Entities (Implementation Plans and Compliance).	186	1	186	350 hrs.; $21,833[4].	65,100 hrs.; $4,060,938.	21,833
Local Distribution Determinations ...	8	1	8	92 hrs.; 7,086[5] ..	736 hrs.; $56,688	7,086
Total	....	....	214	....	67,716 hrs.; $4,217,186.	....

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[1] The Commission defines burden as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

[2] The FERC–725J information collection no longer includes reporting burden for "System Review and List Creation" and "Regional and ERO Handling of Exception Requests". These two response categories were part of the reporting burden in Years 1 and 2 of the FERC–725J implementation and have been completed.

[3] The hourly cost figure (wages plus benefits) comes from the Bureau of Labor Statistics (*http://www.bls.gov/oes/current/naics2_22.htm*). The figure is for an electric engineer ($62.38, Occupational Code: 17–2071), file clerk ($30.53, Occupational Code: 43–4071), and a lawyer (129.12, Occupational Code: 23–0000); the calculation is as follows: 60 hours of burden * $62.38 = $3,743; 32 hours * $30.53 = $977; 2 hours * $129.12 = $258. $3,743 + $977 + $258 = $4,978.

[4] The hourly cost figure of $62.38 (wages plus benefits) comes from the Bureau of Labor Statistics (*http://www.bls.gov/oes/current/naics2_22.htm*). The figure is for an electric engineer (Occupational Code: 17–2071).

[5] The hourly cost figure (wages plus benefits) comes from the Bureau of Labor Statistics (*http://www.bls.gov/oes/current/naics2_22.htm*). The figure is a weighted average comprised of hourly figures for an electric engineer ($62.38, Occupational Code: 17–2071), file clerk ($30.53, Occupational Code: 43–4071), and a lawyer (129.12, Occupational Code: 23–0000); the calculation is as follows: 60 hours of burden * $62.38 = $3,743; 8 hours * $30.53 = $244; 24 hours * $129.12 = $3,099. $3,743 + $244 + $3,099 = $7,086.

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: May 5, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–11228 Filed 5–11–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14772–000]

Black Mountain Hydro, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On March 24, 2016, Black Mountain Hydro, LLC, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Southern Intertie Pumped Storage Project (Southern Intertie Project or project) to be located on Black Mountain, near Yerington, in Mineral and Lyon Counties, Nevada. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed closed-loop pumped storage project would consist of the following: (1) An upper reservoir in a natural depression having a total storage capacity of 4,460 acre-feet at a normal maximum operating elevation of 7,410 feet mean sea level (msl); (2) a 105-foot-tall, 1,500-foot-long lower dam of indeterminate construction; (3) a lower reservoir having a total storage capacity of 4,384 acre-feet at a normal maximum operating elevation of 5,500 feet msl; (4) a 2,200-foot-long, 16.5-foot-diameter, concrete low pressure tunnel; (5) a 7,850-foot-long 16.5-foot-diameter concrete and steel lined high pressure tunnel; (6) a 2,200-foot-long, 20-foot-diameter concrete lined tailrace; (7) a 300-foot-long, 80-foot-wide, 50-feet-high underground powerhouse containing three 200–MW pump-turbine generator units; (8) a 4.6-mile-long 230-kV transmission line; (9) a 230/500 kV substation; and (10) appurtenant facilities. The estimated annual generation of the Southern Intertie Project would be 1,577 gigawatt-hours.

Applicant Contact: Mr. Mathew Schapiro, Chief Executive Officer, Gridflex Energy, LLC, 1210 W. Franklin St., Ste. 2, Boise, Idaho 83702; phone: (208) 246–9925.

FERC Contact: Joseph Hassell; phone: (202) 502–8079.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–14772–000.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14772) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: May 6, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–11227 Filed 5–11–16; 8:45 am]

BILLING CODE 6717–01–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Meeting Notice

AGENCY: Equal Employment Opportunity Commission.

DATE AND TIME: Wednesday, May 18, 2016, 1:00 p.m. Eastern Time.

PLACE: Jacqueline A. Berrien Conference Room on the First Floor of the EEOC Office Building, 131 "M" Street NE., Washington, DC 20507.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Votes, and
2. Innovation Opportunity: Examining Strategies to Promote Diverse and Inclusive Workplaces in the Tech Industry.

Note: In accordance with the Sunshine Act, the meeting will be open to public observation of the Commission's deliberations and voting. Seating is limited and it is suggested that visitors arrive 30 minutes before the meeting in order to be processed through security and escorted to the meeting room. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides information about Commission meetings on its Web site, *www.eeoc.gov,* and provides a recorded announcement a week in advance on future Commission sessions.)

Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TTY) at any time for information on these meetings. The EEOC provides sign language interpretation and Communication Access Realtime Translation (CART) services at Commission meetings for the hearing impaired. Requests for other reasonable accommodations may be made by using the voice and TTY numbers listed above.

CONTACT PERSON FOR MORE INFORMATION: Bernadette B. Wilson, Acting Executive Officer on (202) 663–4077.

Dated: May 10, 2016.

Bernadette B. Wilson,

Acting Executive Officer, Executive Secretariat.

[FR Doc. 2016–11344 Filed 5–10–16; 4:15 pm]

BILLING CODE 6570–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0819]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before July 11, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele at (202) 418–2991.

OMB Control Number: 3060–0819.

Title: Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support, Connect America Fund.

Form Numbers: FCC Form 497, 555, & 481.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households and business or other for-profit.

Number of Respondents: 21,162,260 respondents; 23,956,240 responses.

Estimated Time per Response: .0167 hours—250 hours.

Frequency of Response: Annual and on occasion reporting requirements and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 13,484,412 hours.

Total Annual Cost: $937,500.

Privacy Act Impact Assessment: Yes. The Commission completed a Privacy Impact Assessment (PIA) for some of the information collection requirements contain in this collect. The PIA was published in the **Federal Register** at 78 FR 73535 on December 6, 2013. The PIA may be reviewed at: *http://www.fcc.gov/omd/privacyact/Privacy_Impact_Assessment.html.*

Nature and Extent of Confidentiality: Some of the requirements contained in this information collection do affect individuals or households, and thus, there are impacts under the Privacy Act. The FCC's system of records notice (SORN), FCC/WCB–1, "Lifeline Program." The Commission will use the information contained in FCC/WCB–1 to cover the personally identifiable information (PII) that is required as part of the Lifeline Program ("Lifeline"). As required by the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Commission also published a SORN, FCC/WCB–1 "Lifeline Program" in the **Federal Register** on December 6, 2013 (78 FR 73535).

Also, respondents may request materials or information submitted to the Commission or to the Universal Service Administrative Company (USAC or Administrator) be withheld from public inspection under 47 CFR 0.459 of the FCC's rules. We note that USAC must preserve the confidentiality of all data obtained from respondents; must not use the data except for purposes of administering the universal service programs; and must not disclose data in company-specific form unless directed to do so by the Commission.

Needs and Uses: The Commission will submit this information collection after this comment period to obtain the full, three-year clearance from the Office of Management and Budget (OMB). The Commission also proposes several revisions to this information collection.

On April 27, 2016, the Commission released an order reforming its low-income universal service support mechanisms. Lifeline and Link Up Reform and Modernization; Telecommunications Carriers Eligible for Universal Service Support; Connect America Fund, WC Docket Nos. 11–42, 09–197, 10–90, Third Further Notice of Proposed Rulemaking, Order on Reconsideration, and Further Report and Order, (*Lifeline Third Reform Order*). This revised information collection addresses requirements to carry out the programs to which the Commission committed itself in the *Lifeline Third Reform Order*. Under this information collection, the Commission seeks to revise the information collection to comply with the Commission's new rules, adopted in the *Lifeline Third Reform Order*, regarding phasing out support for mobile voice over the next six years, requiring Eligible Telecommunications Carriers (ETCs) to certify compliance with the new minimum service requirements, creating a new ETC designation for Lifeline Broadband Providers (LBPs), updating the obligations to advertise Lifeline offerings, modifying the non-usage de-enrollment requirements within the program, moving to rolling annual subscriber recertification, and streamlining the first-year ETC audit requirements. Also, the Commission seeks to update the number of respondents for all the existing information collection requirements, thus increasing the total burden hours for some requirements and decreasing the total burden hours for other requirements. Finally, the Commission seeks to revise the FCC Forms 555, 497, and 481 to incorporate the new Commission rules and modify the filings for FCC Forms 555 and 497 to include detailed field descriptions.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2016–11143 Filed 5–11–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 26, 2016.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Sam Charles Brown and Josephine Marie Brown, Pueblo, Colorado;* to retain voting shares and thereby control of Pueblo Bancorporation, parent of Pueblo Bank & Trust Company, both of Pueblo, Colorado. In addition, Michelle Rene Brown, Kenneth Scott Brown, Karla Lynn Brown, and Sam Charles Brown, III, all of Pueblo, Colorado, request approval to retain shares of Pueblo Bancorporation and for approval as members of the Brown Family Group, which acting in concert, controls Pueblo Bancorporation.

Board of Governors of the Federal Reserve System, May 6, 2016.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2016–11188 Filed 5–11–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Notice; Correction

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY: On February 19, 2016, the Board published a notice of final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority. This document corrects the effective dates in the notice.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer —Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

Correction: The Board published in the **Federal Register** of February 19, 2016 (81 FR 8491), a notice of final approval of proposed revisions to the Semiannual Report of Derivatives Activity (FR 2436) and the Central Bank Survey of Foreign Exchange and Derivate Market Activity (FR 3036). The document announced incorrect effective dates for the two collections.

Under the effective date for the Semiannual Report of Derivatives Activity correct the *Effective Date* to read: "*Effective Date:* June 30, 2016."

Under the effective date for the Central Bank Survey of Foreign Exchange and Derivative Market Activity correct the *Effective Date* to read: "*Effective Date:* April 30, 2016."

Board of Governors of the Federal Reserve System, May 6, 2016.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2016–11203 Filed 5–11–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 6, 2016.

A. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street NE., Atlanta, Georgia 30309:

1. *Millennium Bancshares, Inc.;* to become a bank holding company by acquiring 100 percent of the outstanding shares of Millennium Bank, both of Ooltewah, Tennessee.

Board of Governors of the Federal Reserve System, May 6, 2016.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2016–11187 Filed 5–11–16; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces a meeting for the initial review of applications in response to PAR 13–129, Occupational Safety and Health Research, NIOSH Member Conflict Review.

Time and Date: 1:00 p.m.–5:00 p.m., EDT, June 9, 2016 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters for Discussion: The meeting will include the initial review, discussion, and evaluation of applications received in response to "PAR 13–129, Occupational Safety and Health Research, NIOSH Member Conflict Review."

Contact Person for More Information: Nina Turner, Ph.D., Scientific Review Officer, NIOSH, CDC, 1095 Willowdale Road, Mailstop G905, Morgantown, West Virginia 26506, Telephone: (304) 285–5976.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and

Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2016–11142 Filed 5–11–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–16–16GX]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Mining Industry Surveillance System—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The mission of the National Institute for Occupational Safety and Health (NIOSH) is to promote safety and health at work for all people through research and prevention. The Federal Mine Safety and Health Act of 1977, Section 501, enables NIOSH to carry out research relevant to the health and safety of workers in the mining industry. Surveillance of occupational injuries, illnesses, and exposures has been an integral part of the work of NIOSH since its creation by the Occupational Safety and Health Act in 1970. Surveillance activities at the Office of Mine Safety and Health Research (OMSHR), a division of NIOSH, are focused on the nation's mining workforce.

OMSHR is planning to develop the Mining Industry Surveillance System, a unique source of longitudinal information on U.S. mines and their employees. Its purpose will be to: (1) Track changes and emerging trends over time; (2) provide current data to guide research and training activities; (3) provide updated demographic and occupational data for the mining workforce; and (4) provide denominator data to help understand the risk of work-related injuries, disease, and fatalities in specific demographic and occupational subgroups.

The goal of the proposed project is to improve its surveillance capability related to the occupational risks in mining. NIOSH is requesting a three-year approval for this data collection.

NIOSH is planning to use the Mining Industry and Workforce Survey (MIWS) to collect data for the Mining Industry Surveillance System. Data will be collected through surveys conducted on a rotating basis in mining sectors aligned with national mining association. In Phase 1 of the project, the MIWS will be conducted in the stone/sand and gravel mining sector in year 1, the metal/nonmetal mining sector in year 2, and the coal mining sector in year 3. Data from this survey will provide denominator data so that accident, injury, and illness reports can be evaluated in relation to the population at risk. Additionally, NIOSH cannot separately determine the number of contractor employees working in metal, nonmetal, stone, or sand and gravel mines. The survey will collect mine-level data on contractor employees to allow NIOSH to determine the quantity of contract labor that mine operators use and the type of work these employees perform. NIOSH will also use the MIWS to collect mine-level data that will provide a valuable picture of the current working environment (work schedules and shift work practices) used in the U.S. mining industry.

Estimated Annualized Burden Hours

The burden estimates were derived in the following manner. Based on the stratification and sample size allocation plan developed for this project 34% of all sampled mines have fewer than 10 employees. Mines with 10 or fewer employees will not have to do any sampling as they will be asked to provide data for all of their employees. Small mines will require up to 45 minutes to complete the survey. Mines with 11 or more employees will need up to 1.5 hours given their need to generate an employee roster and sample 10 of their employees. Thus, NIOSH is estimating that the average annual burden to complete the survey will be 1 hour. Non-responding mines will be asked to complete the Nonresponse Survey which consists of only seven questions. NIOSH estimates that the burden for this brief survey will be 10 minutes or less. The burden data are calculated based on a 60% response rate for the sampled mines. This does not take into account that some sampled mines may not be eligible to participate in the survey (*e.g.,* inactive, temporarily closed). The total estimated annualized burden hours are 491.

There is no cost to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Responding Mines	Mining Industry and Workforce Survey	420	1	1
Nonresponding Mines	Phone Script	280	1	5/60
Nonresponding Mines	Nonresponse Survey	280	1	10/60

Leroy A. Richardson

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–11179 Filed 5–11–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

World Trade Center Health Program Scientific/Technical Advisory Committee (WTCHP STAC or Advisory Committee), National Institute for Occupational Safety and Health (NIOSH), Docket Number CDC–2016–0036; NIOSH 248–E

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting of the aforementioned committee:

Time and Date: 9:00 a.m.–5:00 p.m., June 2, 2016 (All times are Eastern Daylight Time).

Place: Jacob J. Javits Federal Building, 26 Federal Plaza, New York, New York 10278. This meeting will also be available by telephone and Web conference. Audio only will be available by telephone; video will be available by Web conference. The USA toll-free, dial-in number is 1–888–606–8411, and when prompted enter passcode—5064451. To view the web conference, enter the following web address in your web browser: *https://odniosh.adobeconnect.com/wtchpstac/.*

Public Comment Time and Date: 9:20 a.m.–9:50 a.m., June 2, 2016.

Please note that the public comment period ends at the time indicated above or following the last call for comments, whichever is earlier. Members of the public who want to comment must sign up by providing their name by mail, email, or telephone, at the addresses provided below by May 29, 2016. Each commenter will be provided up to five minutes for comment. A limited number of time slots are available and will be assigned on a first come–first served basis. Written comments will also be accepted from those unable to attend the public session.

Status: Open to the public, limited only by the number of telephone lines. The conference line will accommodate up to 50 callers; therefore it is suggested that those interested in calling in to listen to the committee meeting share a line when possible.

Background: The Advisory Committee was established by Title I of the James Zadroga 9/11 Health and Compensation Act of 2010, Public Law 111–347 (January 2, 2011), amended by Public Law 114–113 (Dec. 18, 2015), adding Title XXXIII to the Public Health Service (PHS) Act (codified at 42 U.S.C. 300mm to 300mm-61).

Purpose: The purpose of the Advisory Committee is to review scientific and medical evidence and to make recommendations to the World Trade Center (WTC) Program Administrator regarding additional WTC Health Program eligibility criteria, potential additions to the list of covered WTC-related health conditions, and research regarding certain health conditions related to the September 11, 2001 terrorist attacks. Title XXXIII of the PHS Act established the WTC Health Program within the Department of Health and Human Services (HHS). The WTC Health Program provides medical monitoring and treatment benefits to eligible firefighters and related personnel, law enforcement officers, and rescue, recovery, and cleanup workers who responded to the September 11, 2001, terrorist attacks in New York City, at the Pentagon, and in Shanksville, Pennsylvania (responders), and to eligible persons who were present in the dust or dust cloud on September 11, 2001 or who worked, resided, or attended school, childcare, or adult daycare in the New York City disaster area (survivors). Certain specific activities of the WTC Program Administrator are reserved to the Secretary, HHS, to delegate at her discretion; other WTC Program Administrator duties not explicitly reserved to the Secretary, HHS, are assigned to the Director, NIOSH. The administration of the Advisory Committee is left to the Director of NIOSH in his role as WTC Program Administrator. CDC and NIOSH provide funding, staffing, and administrative support services for the Advisory Committee. The charter was reissued on May 12, 2015, and will expire on May 12, 2017.

Matters for Discussion: The Advisory Committee will address the new responsibilities required under the reauthorization of the WTC Health Program in the PHS Act. Specifically, the enhanced role of the STAC to (1) make recommendations regarding the identification of individuals to conduct independent peer reviews of the evidence that would be the basis for issuing final rules to add a health condition to the List of WTC-Related Health Conditions; and (2) review and evaluate the policies and procedures in effect within the WTC Health Program that are used to determine whether sufficient evidence is available to support adding a non-cancer condition or type of cancer to the List of WTC-Related Health Conditions.

The two policies can be found at: *http://www.cdc.gov/wtc/policies.html.* The agenda will include presentations on peer review and the policies and procedures the WTC Health Program uses to add health conditions to the list of covered conditions.

The agenda is subject to change as priorities dictate.

To view the notice, visit *http://www.regulations.gov* and enter CDC–2016–0036 in the search field and click "Search."

Public Comment Sign-up and Submissions to the Docket: To sign up to provide public comments or to submit comments to the docket, send information to the NIOSH Docket Office by one of the following means:

Mail: NIOSH Docket Office, Robert A. Taft Laboratories, MS C–34, 1090 Tusculum Avenue, Cincinnati, Ohio 45226.

Email: nioshdocket@cdc.gov.

Telephone: (513) 533–8611.

In the event an individual cannot attend, written comments may be submitted. The comments should be limited to two pages and submitted through *http://www.regulations.gov* enter CDC–2016–0036 in the search field and click "Search" by May 29, 2016. Efforts will be made to provide the two-page written comments received by the deadline above to the committee members before the meeting. Comments in excess of two pages will be made publicly available at *http://www.regulations.gov* (enter CDC–2016–0036 in the search field and click "Search").

Policy on Redaction of Committee Meeting Transcripts (Public Comment): Transcripts will be prepared and posted to *http://www.regulations.gov* (enter CDC–2016–0036 in the search field and click "Search") within 60 days after the meeting. If a person making a comment gives his or her name, no attempt will be made to redact that name. NIOSH will take reasonable steps to ensure that individuals making public comments are aware of the fact that their comments (including their name, if provided) will appear in a transcript of the meeting posted on a public Web site. Such reasonable steps include a statement read at the start of the meeting stating that transcripts will be posted and names of speakers will not be redacted. If individuals in making a statement reveal personal information (*e.g.*, medical information) about themselves, that information will not usually be redacted. The CDC Freedom of Information Act coordinator will, however, review such revelations in accordance with the Freedom of Information Act and, if deemed appropriate, will redact such information. Disclosures of information concerning third party medical information will be redacted.

Contact Person for More Information: Paul J. Middendorf, Ph.D., Designated Federal Officer, NIOSH, CDC, 2400 Century Parkway NE., Mail Stop E–20, Atlanta, Georgia 30345, telephone 1 (888) 982–4748; email: *wtc-stac@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2016–11141 Filed 5–11–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the National Vaccine Advisory Committee

AGENCY: National Vaccine Program Office, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services is hereby giving notice that the National Vaccine Advisory Committee (NVAC) will hold a meeting June 7–8, 2016. The meeting is open to the public. However, pre-registration is required for both public attendance and public comment. Individuals who wish to attend the meeting and/or participate in the public comment session should register at *http://www.hhs.gov/nvpo/nvac/meetings/upcomingmeetings.* Participants may also register by emailing *nvpo@hhs.gov* or by calling (202) 690–5566 and providing their name, organization, and email address.

DATES: The meeting will be held on June 7–8, 2016. The meeting times and agenda will be posted on the NVAC Web site at *http://www.hhs.gov/nvpo/nvac/meetings/upcomingmeetings* as soon as they become available.

ADDRESSES: U.S. Department of Health and Human Services, Hubert H. Humphrey Building, the Great Hall, 200 Independence Avenue SW., Washington, DC 20201.

The meeting can also be accessed through a live webcast the day of the meeting. For more information, visit *http://www.hhs.gov/nvpo/nvac/meetings/upcomingmeetings.*

FOR FURTHER INFORMATION CONTACT: National Vaccine Program Office, U.S. Department of Health and Human Services, Room 715–H, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201. Phone: (202) 690–5566; email: *nvpo@hhs.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to Section 2101 of the Public Health Service Act (42 U.S.C. 300aa–1), the Secretary of Health and Human Services was mandated to establish the National Vaccine Program to achieve optimal prevention of human infectious diseases through immunization and to achieve optimal prevention against adverse reactions to vaccines. The NVAC was established to provide advice and make recommendations to the Director of the National Vaccine Program on matters related to the Program's responsibilities. The Assistant Secretary for Health serves as Director of the National Vaccine Program.

The June 2016 NVAC meeting will continue important discussions on addressing the barriers and scientific challenges to the development of new and improved vaccines, with a presentation from the NVAC Maternal Immunization Working Group of their draft recommendations for overcoming barriers to research and development of vaccines for use in pregnant women. The NVAC will host a comprehensive discussion on the financial costs and perceived barriers to providing immunization services across the lifespan. Committee discussions will also include an update on immunization priorities at the local level, efforts to improve immunization coverage among adults and adolescents, and findings from a midcourse review of the 2010 National Vaccine Plan on the areas of greatest opportunity for strengthening the immunization system going forward. Please note that agenda items are subject to change as priorities dictate. Information on the final meeting agenda will be posted prior to the meeting on the NVAC Web site: *http://www.hhs.gov/nvpo/nvac.*

Public attendance at the meeting is limited to the available space. Individuals who plan to attend in person and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the National Vaccine Program Office at the address/phone listed above at least one week prior to the meeting. For those unable to attend in person, a live webcast will be available. More information on registration and accessing the webcast can be found at *http://www.hhs.gov/nvpo/nvac/meetings/upcomingmeetings.*

Members of the public will have the opportunity to provide comments at the NVAC meeting during the public comment periods designated on the agenda. Public comments made during the meeting will be limited to three minutes per person to ensure time is allotted for all those wishing to speak. Individuals are also welcome to submit their written comments. Written comments should not exceed three pages in length. Individuals submitting written comments should email their comments to the National Vaccine Program Office (*nvpo@hhs.gov*) at least five business days prior to the meeting.

Dated: May 3, 2016.

Bruce Gellin,

Executive Secretary, National Vaccine Advisory Committee, Deputy Assistant Secretary for Health, Director, National Vaccine Program Office.

[FR Doc. 2016–11243 Filed 5–11–16; 8:45 am]

BILLING CODE 4150–44–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Re-Establishment of the Physical Activity Guidelines Advisory Committee and the Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives

AGENCY: Office of Disease Prevention and Health Promotion, Office of the Assistant Secretary for Health, Office of the Secretary, U.S. Department of Health and Human Services.

ACTION: Notice.

Authority: Re-establishment of the Physical Activity Guidelines Advisory Committee and the Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives is authorized under 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended. The Committees will be governed by provisions of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App.), which sets forth standards for the formation and use of advisory committees.

SUMMARY: The U.S. Department of Health and Human Services (HHS) announces re-establishment of the Physical Activity Guidelines Advisory Committee and the Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives. The new titles for the Committees are the 2018 Physical Activity Guidelines Advisory Committee and the Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives for 2030, respectively. The 2018 Physical Activity Guidelines Advisory Committee and the Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives have been established as discretionary federal advisory committees. Both committees have been established to perform single, time-limited tasks that will assist with furthering the mission of the HHS.

FOR FURTHER INFORMATION CONTACT: *2018 Physical Activity Guidelines Advisory Committee:* Richard D. Olson, MD, MPH; Designated Federal Officer or LT Katrina L. Piercy, Ph.D., RD, ACSM–CEP, Alternate DFO; Office of Disease Prevention and Health Promotion, OASH/DHHS; 1101 Wootton Parkway, Suite LL100 Tower Building; Rockville, MD 20852; Telephone: (240) 453–8280; Fax: (240) 453–8281. *Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives for 2030:* Emmeline Ochiai, Designated Federal Officer or Carter Blakey, Alternate DFO; Office of Disease Prevention and Health Promotion, OASH/DHHS; 1101 Wootton Parkway; Suite LL 100 Tower Building; Rockville, MD 20852; Telephone: (240) 453–8280; Fax: (240) 453–8281. Additional information about the 2018 Physical Activity Guidelines Advisory Committee can be found at *http://health.gov/paguidelines*. Additional information about the Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives can be found at *https://www.healthypeople.gov*.

SUPPLEMENTARY INFORMATION: On April 26, 2016, the Secretary approved for the Physical Activity Guidelines Advisory Committee and the Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives to be re-established. Both committees have been re-established to accomplish single, time-limited tasks.

The Physical Activity Guidelines Advisory Committee was first established in February 2007 to assist the Department in development of the first edition of the *Physical Activity Guidelines for Americans* (PAG). The Department plans to develop a second edition of the PAG, and it was recommended that the same process be used to develop this document. The new committee will examine the current edition of the PAG, take into consideration new scientific evidence and current resource documents, and then develop a scientific advisory report that will be submitted to the Secretary. The title for the new committee is the 2018 Physical Activity Guidelines Advisory Committee (2018 PAGAC; the Committee).

Objectives and Scope of Activities. The 2018 PAGAC will provide independent advice and recommendations based on current scientific evidence for use by the federal government in the development of the second edition of the PAG. The PAG provides a foundation for federal recommendations and education for physical activity programs for Americans, including those at risk for chronic disease.

Description of Duties. The work of the 2018 PAGAC is solely advisory in nature. The Committee will be established for the single, time-limited task of reviewing the current edition of the PAG and conducting an evidence-based systematic literature review of physical activity and health for use in developing physical activity recommendations to promote health and reduce chronic disease risk.

Membership and Designation. The 2018 PAGAC will be composed of 11 to 17 members. One or more members will be selected to serve as the Chair, Vice Chair, and/or Co-Chairs. The Committee will consist of respected published experts in designated fields and specific specialty areas. Individuals appointed to serve on the Committee will have demonstrated expert knowledge of current science in the field of human physical activity and health promotion or the prevention of chronic disease. Members will be appointed to the Committee by the Secretary of HHS and invited to serve for the duration of the Committee. All appointed members of the Committee will be classified as special government employees (SGEs).

Administrative Management and Support. The 2018 PAGAC will provide advice to the Secretary of Health and Human Services, through the Assistant Secretary for Health (ASH). The Committee will provide a report to the Secretary, outlining their recommendations and rationale for the second edition of the PAG.

Management and support services for the Committee will be provided within the Office of the Assistant Secretary for Health (OASH) by the Office of Disease Prevention and Health Promotion (ODPHP). The ODPHP is a program staff office within OASH; OASH is a staff division in the HHS Office of the Secretary.

ODPHP will collaborate with the Centers for Disease Control and Prevention (CDC), the National Institutes of Health (NIH), and the OASH program staff office for the President's Council on Fitness, Sports, and Nutrition (PCFSN). The ASH will appoint seven Co-Executive Secretaries to support the Committee, two each from the ODPHP, CDC, and NIH, and one from the OASH staff office for the PCFSN. The two ODPHP Co-Executive Secretaries will be appointed to serve as the DFO and Alternate DFO for the Committee.

The Department established the *Healthy People* initiative in 1979. The initiative was established to develop a framework for improving the health of all people in the United States. Healthy People provides evidence-based, ten-year national objectives for improving the health of all Americans. Every 10 years, the Department issues a comprehensive set of national public health objectives. To assist with this task for the development of *Healthy People 2020,* the Department utilized a scientific advisory committee, the Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives for 2020. It was recommended that the same process be used to assist with development of *Healthy People 2030* because the Department must create a more focused set of ten-year national disease prevention and health promotion objectives that reflect the Nation's needs and carries stakeholder support. The title for the new committee is the Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives for 2030 (the Committee).

Objectives and Scope of Activities. In 1979, HHS established the *Healthy People* initiative to develop a framework for improving the health of all people in the United States. *Healthy People* provides evidence-based, ten-year national objectives for improving the health of all Americans. *Healthy People* offers a strategic agenda to align health promotion and disease prevention activities in communities around the country. The *Healthy People* initiative is grounded in the principle that setting national objective and monitoring progress can motivate action.

The Committee will provide independent advice based on current scientific evidence for use by the Secretary of HHS or a designated representative in the development of *Healthy People 2030.* The Committee will advise the Secretary on the Department's approach for *Healthy People 2030.* Framed around health determinants and risk factors, this approach will generate a focused set of objective that address high-impact public health challenges.

Description of Duties. The work of the Committee is solely advisory in nature. The Committee will perform the single, time-limited task of providing advice regarding creating *Healthy People 2030.* The Committee's duties include providing advice about the *Healthy People 2030* mission statement, vision statement, framework, and organizational structure.

Membership and Designation. The Committee will consist of no more than 13 members. One or more members will be selected to serve as the Chair, Vice Chair, and/or Co-Chairs. The Committee membership may include former Assistant Secretaries for Health and nationally known experts in areas such as biostatistics, business, epidemiology, health communications, health economics, health information technology, health policy, health sciences, health systems, international health, outcomes research, public health law, social determinants of health, special populations, and state and local health public health and from a variety of public, private, philanthropic, and academic settings.

Members will be appointed to the Committee by the Secretary of HHS or a designated representative and invited to serve for the duration of the Committee. All appointed members of the Committee will be classified as special government employees (SGEs).

Administrative Management and Support. The Committee will provide advice to the Secretary of HHS, through the Assistant Secretary for Health (ASH). The ASH will provide oversight for the Committee's function and activities. Management and support services for the Committee will be provided by the Office of Disease Prevention and Health Promotion (ODPHP). ODPHP is a program office within the Office of the Assistant Secretary for Health, which is a staff division in the HHS Office of the Secretary.

To comply with the provisions of FACA, the charters for the 2018 Physical Activity Guidelines Advisory Committee and the Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives for 2030 will be filed with the appropriate Congressional committees and the Library of Congress fifteen calendar days after notice of this action being taken has been published in the **Federal Register**. After the charters have been filed, copies of these documents can be obtained from the ODPHP Web site under the appropriate program headings. Copies of the charters for the two designated committees also can be obtained by accessing the FACA database that is maintained by the Committee Management Secretariat under the General Services Administration. The Web site address for the FACA database is *http://facadatabase.gov/.*

Dated: May 3, 2016.

Karen B. DeSalvo,

Acting Assistant Secretary for Health.

[FR Doc. 2016–11235 Filed 5–11–16; 8:45 am]

BILLING CODE 4150–32–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: Primary and Behavioral Health Care Integration Evaluation—NEW

The Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Behavioral Health Statistics and Quality (CBHSQ) is requesting approval from the Office of Management and Budget (OMB) for new data collection activities associated with their Primary and Behavioral Health Care Integration (PBHCI) program.

This information collection is needed to provide SAMHSA with objective information to document the reach and impact of the PBHCI program. The information will be used to monitor quality assurance and quality performance outcomes for organizations funded by this grant program. The information will also be used to assess the impact of services on behavioral health and physical health services for individuals served by this program. .

Collection of the information included in this request is authorized by Section 505 of the Public Health Service Act (42 U.S.C. 290aa–4)—Data Collection.

SAMHSA launched the PBHCI program in FY 2009 with the understanding that adults with serious mental illness (SMI) experience heightened rates of morbidity and mortality, in large part due to elevated incidence and prevalence of risk factors such as obesity, diabetes, hypertension, and dyslipidemia. These risk factors are influenced by a variety of factors, including inadequate physical activity and poor nutrition; smoking; side effects from atypical antipsychotic medications; and lack of access to health care services. Many of these health conditions are preventable through routine health promotion activities, primary care screening, monitoring, treatment and care management/coordination strategies and/or other outreach programs.

The purpose of the PBHCI grant program is to establish projects for the provision of coordinated and integrated services through the co-location of primary and specialty care medical services in community-based behavioral health settings. The program's goal is to improve the physical health status of adults with serious mental illnesses (and those with co-occurring substance use disorders) who have or are at risk for co-occurring primary care conditions and chronic diseases.

As the largest federal effort to implement integrated behavioral and physical health care in community behavioral health settings, SAMHSA's PBHCI program offers an unprecedented opportunity to identify which approaches to integration improve outcomes, how outcomes are shaped by the characteristics of the treatment setting and community, and which models have the greatest potential for sustainability and replication. SAMHSA awarded the first cohort of 13 PBHCI grants in fiscal year (FY) 2009, and between FY 2009 and FY 2014, SAMHSA funded a total of seven cohorts comprising 127 grants. An eighth cohort, funded in fall 2015, included 60 new grants.

The data collection described in this request will build upon the first PBHCI evaluation and provide essential data on the implementation of integrated primary and behavioral health care, along with rigorous estimates of its effects on health.

The Center for Behavioral Health Statistics and Quality is requesting clearance for ten data collection instruments and forms related to the implementation and impact studies to be conducted as part of the evaluation:

1. PBHCI grantee director survey
2. PBHCI frontline staff survey
3. Telephone interview protocol
4. On-site staff interview protocol
5. Client focus group guide
6. Data extraction tool for grantee registry/electronic health records (EHRs)
7. Initial client letter for physical exam and health assessment
8. Consent form for client physical exam and health assessment
9. Consent form for client focus group
10. Client physical exam and health assessment questionnaire

The table below reflects the annualized hourly burden.

Respondents/activity	Number of respondents	Responses per respondent	Total responses	Hours per response	Total hour burden
Web surveys					
Grantee director	78	2	[b]149	0.5	[b]75
Grantee frontline staff survey	782	2	[c]1,494	0.5	[c]747
Phone interviews					
Grantee director	60	1	60	1.0	60
Grantee director—site interview	10	2	20	2.0	40
Grantee mental health providers—site interview	40	2	80	1.0	80
Grantee primary care providers—site interview	40	2	80	1.5	120
Grantee care coordinators—site interview	20	2	40	1.5	60
Focus groups					
Focus group participants	120	2	240	1.0	240
Extraction of grantee registry/EHR data	92	11	1,012	8.0	8,096
SMI clients—baseline physical exam and health assessment	2,500	1	2,500	1.0	2,500
SMI clients—follow-up physical exam and health assessment	1,750	1	1,750	1.0	1,750
Comparison group clinic director—coordination[d]	10	1	10	8.0	80
Total	[e]3,752		7,435		13,848

[a] Hourly wage estimates are based on salary information provided in 10 PBHCI grant proposals representing mostly urban locations across the country and represent an average across responders of each type.

[b] Cohort VI funding ends before the administration of the second survey. Total number of responses excludes the Cohort VI directors, who will not receive the second survey.

[c] Cohort VI funding ends before the administration of the second survey. Total number of responses excludes the Cohort VI frontline staff, who will not receive the second survey.

[d] Includes logistical coordination between the evaluation and site staff to conduct the physical exam and health assessment as well as oversight of client recruitment.

[e] Excludes physical exam and health assessment follow-up respondents.

Written comments and recommendations concerning the proposed information collection should be sent by June 13, 2016 to the SAMHSA Desk Officer at the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). To ensure timely receipt of comments, and to avoid potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov.* Although commenters are encouraged to send their comments via email, commenters may also fax their comments to: 202–395–7285. Commenters may also mail them to: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10102, Washington, DC 20503.

Summer King,

Statistician.

[FR Doc. 2016–11184 Filed 5–11–16; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0081]

Agency Information Collection Activities: Delivery Ticket

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; Extension of an existing collection of information.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Delivery Ticket (CBP Form 6043). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours or to the information collected. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before June 13, 2016 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** (81 FR 7823) on February 16, 2016, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10. CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden, including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Delivery Ticket.

OMB Number: 1651–0081.

Form Number: CBP Form 6043.

Abstract: CBP Form 6043, *Delivery Ticket,* is used to document transfers of imported merchandise between parties. This form collects information such as the name and address of the consignee; the name of the importing carrier; lien information; the location of where the goods originated and where they were delivered; and information about the imported merchandise. CBP Form 6043 is filled out by warehouse proprietors, carriers, Foreign Trade Zone operators and others involved in transfers of imported merchandise. This form is authorized by 19 U.S.C. 1551a and 1565, and provided for by 19 CFR 4.34, 4.37 and 19.9. It is accessible at: *http://www.cbp.gov/sites/default/files/documents/CBP%20Form%206043.pdf.*

Action: CBP proposes to extend the expiration date of this information collection with no change to the estimated burden hours.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 1,000.

Estimated Number of Annual Responses per Respondent: 200.

Estimated Number of Total Annual Responses: 200,000.

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden Hours: 66,000.

Dated: May 9, 2016.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2016–11218 Filed 5–11–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[Docket No. USCBP–2016–0018]

U.S. Customs and Border Protection User Fee Advisory Committee (UFAC) Meeting

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security (DHS).

ACTION: Committee management; notice of federal advisory public committee meeting.

SUMMARY: The U.S. Customs and Border Protection User Fee Advisory Committee (UFAC) will meet on Wednesday, June 1, 2016, in Washington, DC. The meeting will be open to the public.

DATES: The UFAC will meet on Wednesday, June 1, 2016, from 1:00 p.m. to 3:00 p.m. EDT. Please note that the meeting is scheduled for two hours and that the meeting may close early if the committee completes its business.

Pre-Registration: Meeting participants may attend either in person or via webinar after pre-registering using a method indicated below:

- For members of the public who plan to attend the meeting in person, please register either online at *https://apps.cbp.gov/te_reg/index.asp?w=76,* by email to *tradeevents@dhs.gov;* or by fax to (202) 325–4290 by 5:00 p.m. EDT on May 27, 2016.
- For members of the public who plan to participate via webinar, please register online at *https://apps.cbp.gov/te_reg/index.asp?w=77* by 5:00 p.m. EDT on May 27, 2016.

Feel free to share this information with other interested members of your organization or association.

Members of the public who are pre-registered and later require cancellation, please do so in advance of the meeting by accessing one (1) of the following links: *https://apps.cbp.gov/te_reg/cancel.asp?w=76* to cancel an in person registration, or *https://apps.cbp.gov/te_reg/cancel.asp?w=77* to cancel a webinar registration.

ADDRESSES: The meeting will be held at the U.S. International Trade Commission, 500 E Street SW., Courtroom A, Washington, DC 20436. There will be signage posted directing visitors to the location of the conference room.

For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, contact Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection at (202) 344–1661 as soon as possible.

To facilitate public participation, we are inviting public comment on the topics to be discussed by the committee, prior to the meeting as listed in the "Agenda" section below.

Comments must be submitted in writing no later than May 23, 2016, and must be identified by Docket No. USCBP–2016–0018, and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: Tradeevents@dhs.gov.* Include the docket number in the subject line of the message.
- *Fax:* (202) 325–4290.
- *Mail:* Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Room 3.5A, Washington, DC 20229.

Instructions: All submissions received must include the words "Department of Homeland Security" and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided. Do not submit personal information to this docket.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and search for Docket Number USCBP–2016–0018. To submit a comment, see the link on the Regulations.gov Web site for "How do I submit a comment?" located on the right hand side of the main site page.

There will be two (2) public comment periods held during the meeting on June 1, 2016. Speakers are requested to limit their comments to two (2) minutes or less to facilitate greater participation. Contact the individual listed below to register as a speaker. Please note that the public comment periods for speakers may end before the times indicated on the schedule that is posted on the CBP Web page, *http://www.cbp.gov/trade/stakeholder-engagement/user-fee-advisory-committee.*

FOR FURTHER INFORMATION CONTACT: Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Room 3.5A, Washington, DC 20229; telephone (202) 344–1440; facsimile (202) 325–4290.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (5 U.S.C. Appendix), the Department of Homeland Security (DHS) hereby announces the meeting of the U.S. Customs and Border Protection User Fee Advisory Committee (UFAC). The UFAC is tasked with providing advice to the Secretary of Homeland Security (DHS) through the Commissioner of U.S. Customs and Border Protection (CBP) on matters related to the performance of inspections coinciding with the assessment of an agriculture, customs, or immigration user fee.

Agenda

1. Oath and Recognition of the incoming UFAC members.
2. The Financial Assessment and Options Subcommittee will review and discuss their Statement of Work and Next Steps.
3. Public Comment Period.
4. The Process Improvements Subcommittee will review and discuss their Statement of Work and Next Steps.
5. Public Comment Period.

Dated: May 9, 2016.

Maria Luisa Boyce,

Senior Advisor for Private Sector Engagement, Office of Trade Relations, U.S. Customs and Border Protection.

[FR Doc. 2016–11280 Filed 5–11–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Saybolt LP as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Saybolt LP as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Saybolt LP has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of January 22, 2016.

DATES: *Effective:* The accreditation and approval of Saybolt LP as commercial gauger and laboratory became effective on January 22, 2016. The next triennial inspection date will be scheduled for January 2019.

FOR FURTHER INFORMATION CONTACT: Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Saybolt LP, 16025–A Jacinto Port Blvd., Houston, TX 77015, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Saybolt LP is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
3	Tank gauging.
7	Temperature determination.
8	Sampling.
11	Physical Properties.
12	Calculations.
17	Maritime measurement.

Saybolt LP is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–03	D4006	Standard Test Method for Water in Crude Oil by Distillation.
27–05	D4928	Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration.
27–06	D473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27–08	D86	Standard Test Method for Distillation of Petroleum Products.
27–13	D4294	Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry.

CBPL No.	ASTM	Title
27–46	D5002	Density of Crude Oils by Digital Density Meter.
27–48	D4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.
27–50	D93	Standard Test Methods for Flash-Point by Pensky-Martens Closed Cup Tester.

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories

Dated: May 6, 2016.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2016–11289 Filed 5–11–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of AmSpec Services, LLC, as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of AmSpec Services, LLC, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that AmSpec Services, LLC, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of August 26, 2015.

DATES: *Effective:* The accreditation and approval of AmSpec Services, LLC, as commercial gauger and laboratory became effective on August 26, 2015. The next triennial inspection date will be scheduled for August 2018.

FOR FURTHER INFORMATION CONTACT: Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that AmSpec Services, LLC, 1980 Oriziba Ave., Signal Hill, CA 90755, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. AmSpec Services, LLC is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
3	Tank Gauging.
7	Temperature Determination.
8	Sampling.
11	Physical Properties.
12	Calculations.
17	Maritime Measurement.

AmSpec Services, LLC is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–05	D4928	Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration.
27–06	D473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27–13	D4294	Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry.
27–46	D5002	Density of Crude Oils by Digital Density Meter.
27–48	D4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories

Dated: May 6, 2016.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2016–11291 Filed 5–11–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–ES–2015–0126; FXHC11220900000–156–FF09E33000]

Proposed Revisions to the U.S. Fish and Wildlife Service Mitigation Policy

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Announcement of draft policy; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are reopening the comment period for our March 8, 2016, notice that announced proposed revisions to the Service Mitigation Policy. This action will allow interested persons additional time to comment on the proposed revisions. Comments previously submitted need not be resubmitted as they will be fully considered in preparation of the final policy.

DATES: We will accept comments from all interested parties until June 13, 2016. Please note that if you are using the Federal eRulemaking Portal (see **ADDRESSES**, below), the deadline for submitting an electronic comment is 11:59 p.m. Eastern Time on this date.

ADDRESSES: *Document Review:* The draft policy is available for review at *http://www.regulations.gov,* under docket number FWS–HQ–ES–2015–0126.

General Comments: You may submit comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* In the Search box, enter the Docket number for the proposed policy, which is FWS–HQ–ES–2015–0126. You may enter a comment by clicking on the "Comment Now!" button. Please ensure that you have found the correct document before submitting your comment.
- *U.S. mail or hand delivery:* Public Comments Processing, Attn: Docket No. FWS–HQ–ES–2015–0126; Division of Policy, Performance and Management; U.S. Fish and Wildlife Service; 5275 Leesburg Pike, MS: BPHC; Falls Church, VA 22041–3803.

We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Public Comments, below, for more information).

FOR FURTHER INFORMATION CONTACT: Jason Miller, U.S. Fish and Wildlife Service, Branch of Conservation Planning Assistance, 5275 Leesburg Pike, Falls Church, VA 22041–3803; telephone 703–358–1756.

SUPPLEMENTARY INFORMATION:

Public Comments

We will accept written comments during this reopened comment period on our notice announcing proposed revisions to the Service Mitigation Policy that published in the **Federal Register** on March 8, 2016 (81 FR 12380). We will consider comments and information that we receive from all interested parties on or before the close of the comment period (see **DATES**).

If you have already submitted comments during the public comment period that began March 8, 2016, please do not resubmit them. We have incorporated them into the public record, and we will fully consider them in the preparation of our final policy.

You may submit your comments by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit a comment via *http://www.regulations.gov,* your entire comment—including any personal identifying information—will be posted on the Web site. We will post all hardcopy comments on *http://www.regulations.gov* as well. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Background

On March 8, 2016, we published a notice (81 FR 12380) announcing proposed revisions to our Mitigation Policy (January 23, 1981; 46 FR 7644–7663). The revisions were motivated by changes in conservation challenges and practices since 1981, including accelerating loss of habitats, effects of climate change, and advances in conservation science. The revised policy provides a framework for applying a landscape-scale approach to achieve, through application of the mitigation hierarchy, a net gain in conservation outcomes, or at a minimum, no net loss of resources and their values, services, and functions resulting from proposed actions. The primary intent of the policy is to apply mitigation in a strategic manner that ensures an effective linkage with conservation strategies at appropriate landscape scales.

The revised policy integrates all authorities that allow the Service to recommend or require mitigation of impacts to federal trust fish and wildlife resources, and other resources identified in statute, during development processes. It is intended to serve as a single umbrella policy under which the Service may issue more detailed policies or guidance documents covering specific activities in the future.

Our March 8, 2016, notice stated that we would accept comments on the proposed revisions to our Mitigation Policy for 60 days, ending May 9, 2016. During the course of the comment period on the notice, we received requests to extend the public comment period. In order to provide all interested parties an opportunity to review and comment on the proposed revisions, we are reopening the comment period on the proposed revisions until the date specified in **DATES**.

Authority

The multiple authorities for this action include the: Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*); Fish and Wildlife Coordination Act, as amended, (16 U.S.C. 661–667(e)); National Environmental Policy Act (42 U.S.C. 4321 *et seq.*); and others identified in section 2 and Appendix A of the proposed policy (81 FR 12380).

Dated: May 6, 2016.

James W. Kurth,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2016–11267 Filed 5–11–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R8–NWRS–2016–0063; FXRS12610800000–167–FF08R00000]

Lower Klamath, Clear Lake, Tule Lake, Upper Klamath, and Bear Valley National Wildlife Refuges, Klamath County, OR; Siskiyou and Modoc Counties, CA: Draft Comprehensive Conservation Plan/Environmental Impact Statement; Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments; correction.

SUMMARY: On May 6, 2016, we, the U.S. Fish and Wildlife Service, announced the availability of a Draft Comprehensive Conservation Plan (CCP) and Environmental Impact Statement (EIS) for Lower Klamath, Clear Lake, Tule Lake, Upper Klamath, and Bear Valley National Wildlife Refuges (Refuges) for review and comment. In one instance, we printed the incorrect docket number for interested parties to use to submit comments. The correct docket number is FWS–R8–NWRS–2016–0063. With this notice, we correct that error.

FOR FURTHER INFORMATION CONTACT: Klamath Refuge Planner, (916) 414–6464 (phone).

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 6, 2016 (81 FR 27468; FR Doc. 2016–10717), in the second column of page 27468 in the **ADDRESSES** section, correct the docket number from "FWS–R8–R–2016–0063" to "FWS–R8–NWRS–2016–0063."

Dated: May 9, 2016.

Tina A. Campbell,

Chief, Division of Policy, Performance, and Management Programs, U.S. Fish and Wildlife Service.

[FR Doc. 2016–11214 Filed 5–11–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX16AE6000C1000]

Exclusive Licenses

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of intent to grant an exclusive license.

SUMMARY: The Notice is hereby given that the U.S. Geological Survey intends to grant to Williamson and Associates, 1124 NW 53rd ST, Seattle, WA 98107, an exclusive license to practice the following: A system and method, to utilize induced polarization to locate and detect minerals, and oil plumes below the surface water.

DATES: Comments must be received fifteen (15) days from the effective date of this notice.

FOR FURTHER INFORMATION CONTACT: Benjamin Henry, Technology Enterprise Specialist, Office of Policy and Analysis, U.S. Geological Survey, 12201 Sunrise Valley Dr., MS 153, Reston, VA 20192, 703–648–4344.

SUPPLEMENTARY INFORMATION: It is in the public interest to license this invention, as Williamson and Associates, submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within fifteen (15) days from the date of this published Notice, the U.S. Geological Survey Office of Policy & Analysis receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Katherine McCulloch,

Deputy Associate Director for Administration.

[FR Doc. 2016–11174 Filed 5–11–16; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX064A000 167S180110; S2D2S SS08011000 SX064A000 16XS501520]

Notice of Proposed Information Collection; Request for Comments for 1029–0089

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSMRE) is announcing that the information collection request for the Exemption for Coal Extraction Incidental to the Extraction of Other Minerals, has been submitted to the Office of Management and Budget (OMB) for review and approval. The information collection request describes the nature of the information collection and its expected burden and cost.

DATES: Comments must be submitted on or before June 13, 2016, to be assured of consideration.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Department of the Interior Desk Officer, via email at *OIRA_submission@omb.eop.gov,* or by facsimile to (202) 395–5806. Also, please send a copy of your comments to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave. NW., Room 203—SIB, Washington, DC 20240, or electronically to *jtrelease@osmre.gov.* Please reference 1029–0089 in your correspondence.

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request contact John Trelease at (202) 208–2783, or electronically at *jtrelease@osmre.gov.* You may also review the information collection request online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. OSMRE has submitted a request to OMB to renew its approval for the collection of information found at 30 CFR part 702—Exemption for Coal Extraction Incidental to the Extraction of Other Minerals. OSMRE is requesting a 3-year term of approval for this collection.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is 1029–0089 and is displayed at 30 CFR 702.10.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on this collection of information was published on February 16, 2016 (81 FR 7829). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

Title: 30 CFR part 702—Exemption for Coal Extraction Incidental to the Extraction of Other Minerals.

OMB Control Number: 1029–0089.

Summary: This Part implements the requirement in Section 701(28) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), which grants an exemption from the requirements of SMCRA to operators extracting not more than 16 2/3 percentage tonnage of coal incidental to the extraction of other minerals. This information will be used by the regulatory authorities to make that determination.

Bureau Form Number: None.

Frequency of Collection: Once and annually thereafter.

Description of Respondents: Producers of coal and other minerals, and State regulatory authorities.

Total Annual Responses: 127.

Total Annual Burden Hours: 396.

Total Non-wage Costs: $600.

Obligation to Respond: Required in order to obtain or retain benefits.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the offices listed in the **ADDRESSES** section. Please refer to OMB control number 1029–0089 in all correspondence.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: May 5, 2016.

Harry J. Payne,

Chief, Division of Regulatory Support.

[FR Doc. 2016–11273 Filed 5–11–16; 8:45 am]

BILLING CODE 4310–05–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference; Committee on Rules of Practice and Procedure

AGENCY: Committee on Rules of Practice and Procedure, Judicial Conference of the United States.

ACTION: Notice of open meeting.

SUMMARY: The Committee on Rules of Practice and Procedure will hold a meeting on June 6, 2016, which will continue the morning of June 7, 2016, if necessary. The meeting will be open to public observation but not participation. An agenda and supporting materials will be posted at least 7 days in advance of the meeting at: *http://www.uscourts.gov/rules-policies/records-and-archives-rules-committees/agenda-books.*

DATES: June 6–7, 2016.

Time: 8:30 a.m. to 5:00 p.m.

ADDRESSES: Thurgood Marshall Federal Judiciary Building, Mecham Conference Center, One Columbus Circle NE., Washington, DC 20544.

FOR FURTHER INFORMATION CONTACT: Rebecca A. Womeldorf, Rules Committee Secretary, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: May 6, 2016.

Rebecca A. Womeldorf,

Rules Committee Secretary.

[FR Doc. 2016–11140 Filed 5–11–16; 8:45 am]

BILLING CODE 2210–55–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cooperative Research Group on CHEDE–VII

Notice is hereby given that, on April 21, 2016, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Southwest Research Institute—Cooperative Research Group on CHEDE–VII ("CHEDE–VII") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Toyota Motor Corporation, Shizuoka Perfecture, JAPAN; and Komatsu Ltd., Tochigi-Ken, JAPAN, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and CHEDE–VII intends to file additional written notifications disclosing all changes in membership.

On January 6, 2016, CHEDE–VII filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 2, 2016, (81 FR 5484).

The last notification was filed with the Department on March 15, 2016. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on April 14, 2016(81 FR 22121).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2016–11137 Filed 5–11–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

[OMB Number 1190–NEW]

Agency Information Collection Activities; Proposed eCollection; eComments Requested; Assessing the Potential Monetized Benefits of Captioning Web Content for Individuals Who Are Deaf or Hard of Hearing

AGENCY: Civil Rights Division, Department of Justice.

ACTION: 60-day notice.

SUMMARY: The Department of Justice (DOJ), Civil Rights Division, Disability Rights Section (DRS), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Comments are encouraged and will be accepted for 60 days until July 11, 2016.

FOR FURTHER INFORMATION CONTACT: If you have additional comments (especially on the estimated public burden or associated response time), suggestions, need a copy of the proposed information collection instrument with instructions, or need additional information, please contact Rebecca B. Bond, Chief, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, by any one of the following methods: By email at *CRT.DRS@usdoj.gov;* by regular U.S. mail at Disability Rights Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 2885, Fairfax, VA 22031–0885; by overnight mail, courier, or hand delivery at Disability Rights Section, Civil Rights Division, U.S. Department of Justice, 1425 New York Avenue NW., Suite 4039, Washington, DC 20005; or by phone at (800) 514–0301 (voice) or (800) 514–0383 (TTY) (the DRS Information Line).

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether, and if so, how, the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of information collection:* New information collection.

2. *The title of the form/collection:* Assessing the Potential Monetized Benefits of Captioning Web Content for Individuals Who Are Deaf or Hard of Hearing.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form Number: None.

Component: The applicable component within the Department of Justice is the Disability Rights Section in the Civil Rights Division.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Affected Public (Primary): Individuals who are deaf or hard of hearing will be asked to respond.

Affected Public (Other): None.

Abstract: DOJ's Civil Rights Division, Disability Rights Section (DRS), is requesting PRA approval of a new collection that would request information about the perceived monetary value of captioning on Web sites from individuals who are deaf or hard of hearing for the purpose of estimating the potential monetized benefits of captioning audio and video content on the Web. DRS is not suggesting that people with disabilities should be asked to pay for captioning; rather, it intends to ask individuals about the theoretical monetary value that they place on the captioning of audio and video Web content in order to estimate how highly they value captioning. The collection will also request additional information about how frequently individuals who are deaf or hard of hearing access audio content on Web sites, what type of audio content they access, how often this content is not captioned, how much additional time (if any) they spend trying to access content or information when the content is not captioned, and whether lack of captioning makes using the Internet more difficult. This information will enhance DRS's ability to monetize the benefits of any captioning requirements imposed by future rulemaking under the Americans with Disabilities Act (ADA) for individuals who are deaf or hard of hearing.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 1,070 respondents will complete the questions. It is estimated that an average of 10 minutes per respondent is needed to complete the questions. DRS estimates that nearly all of the approximately 1,070 respondents will fully complete the questions.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 178 hours. It is estimated that respondents will take an average of 10 minutes (1/6 of an hour) to complete the questions. The burden hours for collecting respondent data sum to 178.33 hours (1,070 respondents × 1/6 hours = 178 and 1/3 hours).

If additional information is required, contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: May 6, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–11151 Filed 5–11–16; 8:45 am]

BILLING CODE 4410–13–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Department of Labor Generic Solution for Site Visits for Research Purposes

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the information collection request (ICR) proposal titled, "Department of Labor Generic Solution for Site Visits for Research Purposes," to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before June 13, 2016.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201410-1290-002* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OS, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks PRA authority for a DOL generic solution for site visits for research purposes information collection in order to be able to carry out evaluation data collection in a timely manner and to facilitate the gathering of critical information to support analysis around core research questions. Qualitative information will be collected from individuals who are familiar with, are administering or participating in, the intervention being evaluated. Site visits provide critical data for research and evaluation projects that can: (1) Describe implementation issues, the context in which the intervention was implemented, services, management and costs; (2) describe the experiences of service providers at each of the study sites, including site perspectives on implementation challenges and intervention effects; (3) describe the experiences and responses of individuals administering or participating in the intervention; (4) document the extent to which the intervention was implemented as planned; and (5) describe the extent to which treatment and control or comparison groups received the intended services of the intervention, if applicable. Sources of qualitative information proposed for collection include: (1) Exploratory discussions during site recruitment; (2) in-person or telephone discussions with individuals and/or groups from selected sites; and (3) focus groups.

This proposed information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. For additional information, see the related notice published in the **Federal Register** on July 23, 2013 (78 FR 44157).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB ICR Reference Number 201410–1290–002. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: DOL–OS.

Title of Collection: Department of Labor Generic Solution for Site Visits for Research Purposes.

OMB ICR Reference Number: 201410–1290–002.

Affected Public: State, Local, or Tribal Governments; Federal Government; Individuals or Households; Private Sector—businesses or other for-profits, not-for-profit institutions, farms.

Total Estimated Number of Respondents: 20,000.

Total Estimated Number of Responses: 20,000.

Total Estimated Annual Time Burden: 20,000 hours.

Total Estimated Annual Other Costs Burden: $0.

Dated: May 5, 2016.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2016–11185 Filed 5–11–16; 8:45 am]

BILLING CODE 4510–HX–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Occupational Code Assignment

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) revision titled, "Occupational Code Assignment," to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before June 13, 2016.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201603-1205-004* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–ETA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor—OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks approval under the PRA for revisions to the Occupational Code Assignment information collection. Information collected on Form ETA–741, Occupational Code Assignment, is necessary to help occupational information users relate an occupational specialty or job title to an occupational code and title within the framework of the Occupational Information Network. The form helps provide occupational codes for jobs where duties have changed to the extent that the published information is no longer appropriate or the user is unable to classify the job on his or her own. This information collection has been classified as a revision because of minor revisions to the form and because of additional respondents from the American Apprenticeship grant competition. Wagner-Peyser Act section 15 authorizes this information collection. *See* 29 U.S.C. 49l–1.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1205–0137. The current approval is scheduled to expire on May 31, 2016; however, the DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. New requirements would only take effect upon OMB approval. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on December 17, 2015 (80 FR 78769).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205–0137. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: DOL–ETA.

Title of Collection: Occupational Code Assignment.

OMB Control Number: 1205–0137.

Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 30.

Total Estimated Number of Responses: 30.

Total Estimated Annual Time Burden: 15 hours.

Total Estimated Annual Other Costs Burden: $0.

Dated: May 6, 2016.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2016–11186 Filed 5–11–16; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Arts Advisory Panel Meetings

AGENCY: National Endowment for the Arts, National Foundation on the Arts and Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, as amended, notice is hereby given that 29 meetings of the Arts Advisory Panel to the National Council on the Arts will be held by teleconference.

DATES: All meetings are Eastern time and ending times are approximate:

Dance (review of applications): This meeting will be closed.

Date and time: June 2, 2016; 12:00 p.m. to 2:00 p.m.

Dance (review of applications): This meeting will be closed.

Date and time: June 2, 2016; 3:00 p.m. to 5:00 p.m.

Dance (review of applications): This meeting will be closed.

Date and time: June 3, 2016; 12:00 p.m. to 2:00 p.m.

Artist Communities (review of applications): This meeting will be closed.

Date and time: June 13, 2016; 2:00 p.m. to 4:00 p.m.

Local Arts Agencies (review of applications): This meeting will be closed.

Date and time: June 3, 2016; 3:00 p.m. to 5:00 p.m.

Arts Education (review of applications): This meeting will be closed.

Date and time: June 15, 2016; 1:00 p.m. to 3:00 p.m.

Folk & Traditional Arts (review of applications): This meeting will be closed.

Date and time: June 15, 2016; 1:00 p.m. to 3:00 p.m.

Folk & Traditional Arts (review of applications): This meeting will be closed.

Date and time: June 16, 2016; 1:00 p.m. to 3:00 p.m.

Theater and Musical Theater (review of applications): This meeting will be closed.

Date and time: June 16, 2016; 1:00 p.m. to 3:00 p.m.

Theater and Musical Theater (review of applications): This meeting will be closed.

Date and time: June 16, 2016; 4:00 p.m. to 6:00 p.m.

Music (review of applications): This meeting will be closed.

Date and time: June 20, 2016; 12:00 p.m. to 2:00 p.m.

Music (review of applications): This meeting will be closed.

Date and time: June 20, 2016; 3:00 p.m. to 5:00 p.m.

Design (review of applications): This meeting will be closed.

Date and time: June 21, 2016; 12:00 p.m. to 2:30 p.m.

Design (review of applications): This meeting will be closed.

Date and time: June 21, 2016; 3:00 p.m. to 5:30 p.m.

Music (review of applications): This meeting will be closed.

Date and time: June 22, 2016; 12:00 p.m. to 2:00 p.m.

Music (review of applications): This meeting will be closed.

Date and time: June 22, 2016; 3:00 p.m. to 5:00 p.m.

Media Arts (review of applications): This meeting will be closed.

Date and time: June 27, 2016; 11:30 a.m. to 1:30 p.m.

Arts Education (review of applications): This meeting will be closed.

Date and time: June 28, 2016; 1:30 p.m. to 3:30 p.m.

Opera (review of applications): This meeting will be closed.

Date and time: June 28, 2016; 12:00 p.m. to 2:00 p.m.

Opera (review of applications): This meeting will be closed.

Date and time: June 28, 2016; 3:00 p.m. to 5:00 p.m.

Presenting & Multidisciplinary Works (review of applications): This meeting will be closed.

Date and time: June 28, 2016; 2:00 p.m. to 4:00 p.m.

Visual Arts (review of applications): This meeting will be closed.

Date and time: June 28, 2016; 11:30 a.m. to 1:30 p.m.

Visual Arts (review of applications): This meeting will be closed.

Date and time: June 28, 2016; 2:30 p.m. to 4:30 p.m.

Media Arts (review of applications): This meeting will be closed.

Date and time: June 29, 2016; 11:30 a.m. to 1:30 p.m.

Media Arts (review of applications): This meeting will be closed.

Date and time: June 29, 2016; 2:30 p.m. to 4:30 p.m.

Presenting & Multidisciplinary Works (review of applications): This meeting will be closed.

Date and time: June 29, 2016; 2:00 p.m. to 4:00 p.m.

Presenting & Multidisciplinary Works (review of applications): This meeting will be closed.

Date and time: June 30, 2016; 2:00 p.m. to 4:00 p.m.

Visual Arts (review of applications): This meeting will be closed.

Date and time: June 30, 2016; 11:30 a.m. to 1:30 p.m.

Theater and Musical Theater (review of applications): This meeting will be closed.

Date and time: June 30, 2016; 1:00 p.m. to 3:00 p.m.

ADDRESSES: National Endowment for the Arts, Constitution Center, 400 7th St. SW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National

Endowment for the Arts, Washington, DC 20506; *plowitzk@arts.gov,* or call 202–682–5691.

SUPPLEMENTARY INFORMATION: The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of February 15, 2012, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of title 5, United States Code.

Dated: May 9, 2016.

Kathy Plowitz-Worden,

Panel Coordinator, National Endowment for the Arts.

[FR Doc. 2016–11180 Filed 5–11–16; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Committee on Equal Opportunities in Science and Engineering Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Committee on Equal Opportunities in Science and Engineering (CEOSE) #1173.

Dates/Time: June 8, 2016 1:00 p.m.–5:30 p.m., June 9, 2016 8:30 a.m.–3:30 p.m.

Place: National Science Foundation (NSF), 4201 Wilson Boulevard, Arlington, VA 22230. To help facilitate your entry into the building, please contact Vickie Fung (*vfung@nsf.gov*) on or prior to June 6, 2016.

Type of Meeting: Open.

Contact Person: Dr. Bernice Anderson, Senior Advisor and CEOSE Executive Secretary, Office of Integrative Activities (OIA), National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Contact Information: 703–292–8040/ *banderso@nsf.gov.*

Minutes: Meeting minutes and other information may be obtained from the CEOSE Executive Secretary at the above address or the Web site at *http://www.nsf.gov/od/oia/activities/ceose/index.jsp.*

Purpose of Meeting: To study data, programs, policies, and other information pertinent to the National Science Foundation and to provide advice and recommendations concerning broadening participation in science and engineering.

Agenda

- Opening Statement by the CEOSE Chair
- NSF Executive Liaison Report
- Updates from the Federal Liaisons
- Presentation: NSF INCLUDES (Inclusion across the Nation of Communities of Learners that have been Underrepresented for Diversity in Engineering and Science)
- Leadership Discussion: Broadening Participation in STEM: Disciplinary Highlights
- Presentation: Science of Broadening Participation
- Panel Discussion: Evaluation of NSF BP Programs in EHR (Directorate for Education and Human Resources)
- Working Session with EAC (Evaluation and Assessment Capability): Framework for a Broadening Participation Accountability System—Part II
- Work Session: 2015–2016 CEOSE Biennial Report to Congress

Dated: May 8, 2016.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2016–11166 Filed 5–11–16; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–18, 50–73 and 50–183; NRC–2015–0169]

GE Hitachi Nuclear Energy; Vallecitos Nuclear Center, Partial Site Release

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an environmental assessment and finding of no significant impact regarding a partial site release for license Nos. DPR–1 (Vallecitos Boiling Water Reactor), R–33 (GE-Hitachi Nuclear Test Reactor), and DR–10 (Empire State Atomic Development Agency Vallecitos Experimental Superheat Reactor), issued to GE Hitachi Nuclear Energy at the Vallecitos Nuclear Center in Sunol, California.

DATES: The environmental assessment and finding of no significant impact set forth in this document is available on May 12, 2016.

ADDRESSES: Please refer to Docket ID NRC–2015–0169 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0169. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "*ADAMS Public Documents*" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Jack Parrott, Division of Decommissioning, Uranium Recovery, and Waste Programs, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–00001; telephone: 301–415–6634; email: *Jack.Parrott@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC received, by letter dated April 24, 2015 (ADAMS Accession No. ML15114A437), a request from GE Hitachi Nuclear Energy (GEH or licensee) to approve a partial site release of a portion of its Vallecitos Nuclear Center (VNC) site located at 6705 Vallecitos Road, Sunol, California. The April 24, 2015 letter transmitted a report, entitled "Release of North Section of Vallecitos, California Site," prepared by GEH evaluating the proposed release (ADAMS Accession No. ML15114A438). The VNC site contains four reactor units. Two of the four units are licensed as power reactors under part 50, "Domestic Licensing of Production and Utilization Facilities," of title 10 of the *Code of Federal Regulations* (10 CFR part 50). These two units are the Vallecitos Boiling Water Reactor (VBWR), NRC License DPR–1, Docket 50–18, and the Empire State Atomic Development Agency Vallecitos Experimental Superheat Reactor (EVESR), NRC License DR–10, Docket 50–183. In accordance with 10 CFR 50.4(b)(8)–(9), the licensee has certified, pursuant to 10 CFR 50.82(a)(1), that both units have permanently ceased operation and that all nuclear fuel has been removed from the respective reactor vessels of both units. These units are presently in "SAFSTOR" [1] status awaiting the termination of the power reactor licenses.

The third reactor unit is a shutdown testing facility (also called a test reactor), the General Electric Test Reactor (GETR), NRC License TR–1, Docket 50–70. The GETR has also been defueled and is in a SAFSTOR status. The fourth reactor unit is a currently operating research reactor, the Nuclear Test Reactor (NTR), NRC License R–33, Docket 50–73. The NRC is considering a license amendment application for the NTR that would modify the site description to remove the portion of the site requested by the licensee for release (see the connected action section of this notice).

Research reactors and testing facilities are non-power reactors that are used for research and development, non-power commercial activities, medical therapy, education and training. Non-power reactors differ from power reactors in a number of significant ways. The purpose of a power reactor is to generate steam, which can be used to generate electricity; the purpose of a non-power reactor is to generate radiation for purposes of experimentation, research and development, commercial activities, medical therapy, education, and training. Therefore, non-power reactors operate at significantly lower power than power reactors and at lower temperatures and pressure. For these reasons, non-power reactors have smaller safety and environmental footprints than power reactors.

In accordance with 10 CFR 50.83, "Release of part of a power reactor facility or site for unrestricted use," the licensee requested release from the NRC licenses, for unrestricted use, an approximately 247-hectare (610-acre) parcel in the northern section of the approximately 647-hectare (1,600 acre) VNC site. The licensee is declaring the parcel as a "non-impacted area," which is defined in 10 CFR 50.2 to mean an area "with no reasonable potential for residual radioactivity in excess of natural background or fallout levels." If approved, the 247-hectare (610-acre) parcel will no longer be considered part of the licensed site and thus, no longer under NRC jurisdiction. Once released, the 247-hectare (610-acre) parcel will be available for unrestricted use. In this regard, GEH has indicated that it intends to sell the 247-hectare (610-acre) parcel to a non-GEH controlled entity.

The NRC is considering approval of the requested partial site release for the VBWR and EVESR licenses at the VNC site. Therefore, in compliance with the National Environmental Policy Act, as amended, 42 U.S.C. 4321 *et seq.* (NEPA), and its NEPA implementing regulations in 10 CFR part 51, the NRC has prepared this Environmental Assessment (EA). The NRC is preparing this EA because the site was licensed prior to the enactment of NEPA, and as such, a Final Environmental Statement (FES) or an Environmental Impact Statement (EIS) were never prepared by the NRC's predecessor agency, the Atomic Energy Commission (AEC), when the site was first licensed. In accordance with 10 CFR 50.83(b)(5), if a FES or EIS had been previously prepared, and if the licensee had demonstrated that the environmental impacts associated with the proposed partial site release were bounded by the FES or EIS, then the preparation of an EA would not be necessary. As the EA preparation here is due simply to the absence of a FES or an EIS, the preparation of this EA should not be taken as precedent-setting for future NRC approvals of 10 CFR 50.83 partial site releases of non-impacted land where the NRC or the AEC had previously prepared a FES or an EIS and the licensee has demonstrated that any environmental impacts associated with the partial site release are bounded by that FES or EIS. Based on the results of the EA that follows, the NRC has determined not to prepare an EIS for the partial site release, and is issuing a finding of no significant impact.

II. Environmental Assessment

Description of the Proposed Action

The proposed action would approve the release of a 247-hectare (610-acre), non-impacted parcel, located in the northern section of the approximately 647-hectare (1,600) acre VNC site, for unrestricted use. Once released, the 247-hectare (610-acre) parcel would no longer be part of the licensed site and thus, no longer under NRC jurisdiction.[2] Under the applicable NRC regulation, 10 CFR 50.83(b), a licensee may submit a written request for the release of non-impacted land if a license amendment is not otherwise required. Pursuant to 10 CFR 50.83(c), the NRC can approve such a partial release of non-impacted land for unrestricted use in writing.

Need for the Proposed Action

The licensee has requested the release of the 247-hectare (610-acre), non-impacted parcel as the licensee has no current or projected operational need for this parcel at the licensed site. In fact, the licensee has never used the 247-hectare (610-acre) parcel for licensed operations. The licensee intends to sell the parcel to a non-GEH controlled entity. Once the NRC has approved the release, the 247-hectare (610-acre) parcel can be made available for another use.

VNC Site

VNC is located near the center of the Pleasanton quadrangle of Alameda County, California. The site is east of San Francisco Bay, approximately 56 air kilometers (35 air miles) east-southeast of San Francisco and 32 air kilometers (20 air miles) north of San Jose. The properties surrounding the site are primarily used for agriculture and cattle raising, with some residences, which are mostly to the west of the property. The nearest sizeable towns are Pleasanton located 6.6 kilometers (4.1 miles) to the north-northwest and Livermore located 10 kilometers (6.2 miles) to the northeast.

The site is on the north side of Vallecitos Road (State Route 84), which is a two and four-lane paved highway. A Union Pacific railroad line lies about three kilometers (two miles) west of the site. There is light industrial activity within a 16-kilometer (10-mile) radius of the plant. San Jose (32 kilometers (20 miles) south), Oakland (48 kilometers (30 miles) northwest) and San Francisco (56 kilometers (35 miles) northwest) are major industrial centers. The property boundary, which has not changed since the original property purchase in 1956, is fenced and posted "No Trespassing." A security gate at the entrance provides access control to the active area of the site. The GEH evaluation report provides additional information about the site (ADAMS Accession No. ML15114A438).

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[1] SAFSTOR is the decommissioning method in which a nuclear facility is placed and maintained in a condition that allows the safe storage of radioactive components of the nuclear plant and subsequent decontamination to levels that permit license termination.

[2] The NRC's organic statutory authority is the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 *et seq.* (AEA). Under the AEA, the NRC's jurisdiction is limited to matters of radiological health and safety, for both members of the public and occupational workers, and of physical security for NRC licensed facilities and radioactive materials possessed by NRC licensees. The NRC holds no property interest in licensee owned or controlled lands nor does the NRC have any land or natural resources management authority.

Safety Evaluation of the Proposed Action

The NRC staff evaluated the safety impacts of the proposed action and concludes that the requirements of 10 CFR 50.83, 10 CFR 50.59, and other applicable NRC regulations have been met (see ADAMS Accession No. ML16007A348).

Environmental Impacts of the Proposed Action

The NRC staff evaluated the environmental impacts of the proposed action and concludes that the release of the 247-hectare (610-acre) parcel will not have any adverse environmental impacts. The 247-hectare (610-acre) parcel is located in the northern portion of the site. The parcel consists of undeveloped land and is currently used for cattle grazing. The land has not been used for the processing or storage of radioactive material. The properties surrounding the site are primarily used for agriculture and cattle raising, with some scattered residences mostly to the west of the property. The power reactors at the site have permanently ceased operations and are being maintained in a possession-only SAFSTOR status. The release of the 247-hectare (610-acre) parcel will not impact the shutdown reactors. The licensee notes that the 247-hectare (610-acre) parcel has never been used for licensed activity. The 247-hectare (610-acre) parcel is topographically uphill from the shutdown reactors so any surface or subsurface transport of liquid effluents from the active area of the site could not have impacted the parcel.

There is no evidence of any radiological impact on the 247-hectare (610-acre) parcel. Samples taken in the area do not indicate impact from licensed activities. The licensee measured direct dose in and around the 247-hectare (610-acre) parcel and found that all measurements were consistent with a background direct dose measurement of approximately 0.7 mSieverts/yr (70 mRem/yr) (GEH Annual Report for 2014, ADAMS Accession No. ML15069A472). The NRC verified that the area to be released was not radiologically impacted by licensed site activities, as described in NRC inspection report 050–00018/15–001 (ADAMS Accession No. ML15303A361) dated October 30, 2015.

The NRC staff reviewed the request and concluded that the environmental impacts associated with this request remain bounded by the environmental impacts evaluated in the previously issued "Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities," NUREG–0586, Supplement 1, Volume 1 (*http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr0586/s1/v1/index.html*). NUREG–0586 evaluated the environmental impacts of the decommissioning of entire power reactor sites and facilities that have been impacted by operations. The release of a part of a power reactor site that has been demonstrated to not have been impacted by operations is within the scope of the evaluation performed in NUREG–0586. The NRC staff concludes that the proposed release of the 247-hectare (610-acre) parcel is bounded by NUREG–0586.

The NRC has determined that the proposed release of the 247-hectare (610-acre) parcel is wholly procedural and administrative in nature, that the parcel is radiologically non-impacted, and that the licensee has no safety, physical security, or emergency preparedness need to retain the parcel. The environmental impacts associated with the shutdown power reactors will not change as a result of the proposed release of the 247-hectare (610-acre) parcel. The proposed release will not result in public or environmental exposure to radioactive contamination. There are no known records of any spills, leaks, or uncontrolled release of radioactive material on the 247-hectare (610-acre parcel). The 247-hectare (610-acre) parcel was not used for any activities that could have contaminated the property. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed release of the 247-hectare (610-acre) parcel from NRC jurisdiction does not involve or authorize any construction activities, renovation of buildings or structures, ground disturbing activities or other alteration to land. The proposed release of the 247-hectare (610-acre) parcel will not result in any change to current licensed activities on that portion of the site that will remain under NRC jurisdiction and therefore, will not result in any changes to the workforce or vehicular traffic. Furthermore, as the NRC has determined that the proposed release of the 247-hectare (610-acre) parcel is an administrative action, it is not a type of activity that has the potential to cause effects on historic properties or cultural resources, including traditional cultural properties. Similarly, the NRC staff has determined that the proposed release of the 247-hectare (610-acre) parcel will have no effect on listed species or critical habitat. In addition the proposed release of the 247-hectare (610-acre) parcel will not result in any change to non-radiological plant effluents and thus, will have no impact on either air or water quality. Therefore, there are no significant non-radiological environmental impacts associated with the proposed release of the 247-hectare (610-acre) parcel.

Accordingly, the NRC staff concludes that there are no significant environmental impacts associated with the proposed action.

Connected Action

In accordance with 10 CFR 50.90, GEH has also requested the amendment of its operating research reactor license for the NTR, NRC License R–33, Docket 50–73 to reflect the release of the 247-hectare (610-acre) parcel. Specifically, GEH has requested an amendment to the license's site description section. GEH submitted that license amendment request on February 16, 2015 (ADAMS Accession No. ML15048A008; attachments to the February 16, 2015 request are at ADAMS Accession Nos. ML15048A007, ML15048A009, ML15048A010, ML15048A011). The NRC approval or disapproval of the proposed NTR license amendment request will be handled administratively as a separate licensing matter. However, the NRC considers that this EA encompasses and otherwise bounds the environmental impacts of the proposed NTR license amendment request. As discussed in Section I, "Introduction," of this notice, a non-power reactor has a much smaller safety and environmental footprint than a power reactor. In this regard, the NTR operates at a power level of 100 kilowatts-thermal. In contrast, the VBWR, the largest of the decommissioned power reactors at the site, operated at a much higher power level, 50 megawatts-thermal. As a further, comparison, a typical commercial nuclear power reactor is rated at 3000 megawatts-thermal, and provides enough electricity to power 200,000 households in the peak summer months. Because of this large difference in thermal power generated, the consequence of an accident at a non-power reactor is much lower when compared to a commercial power reactor. For this reason, the NTR research reactors' emergency planning zones (EPZ) to protect the public from potential radiological accidents is well within the owner-controlled areas—and is the boundary of the room in which the reactor is housed. In accordance with the guidance of ANSI/ANS 15.16–1982, “Emergency Planning for Research Reactors”, the operations boundary is defined as the EPZ boundary for each reactor facility. For the NTR, the operations boundary is defined by the portions of Building 105 occupied by NTR facilities. The NRC staff has concluded that the environmental impacts of reducing the licensed site would be similarly bounded and that there would be no environmental impact associated with the continued operation of the NTR in relation to the proposed release of the 247-hectare (610-acre) parcel.

The shutdown, defueled testing facility, the GETR, NRC License TR–1, Docket 50–70 is not the subject of any license amendment request. The GETR is in SAFSTOR status. The GETR license does not contain a site description and as such, there is no need to amend the GETR license to reflect the release of the 247-hectare (610-acre) parcel. In any event, the NRC staff considers this EA to encompass and bound any environmental impacts resulting from the proposed release of the 247-hectare (610-acre) parcel in relation to the ongoing shutdown, SAFSTOR status of the GETR.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered denial of the proposed release of the 247-hectare (610-acre) parcel (*i.e.*, the “no-action” alternative). Denial of the request would result in the 247-hectare (610-acre) parcel remaining part of the licensed site and subject to NRC jurisdiction. As the licensee has no need for the parcel, its current use as a site for cattle grazing would most likely continue. As there is no policy or regulatory reason for the NRC to require a licensee to retain land that is not radiologically impacted and for which the licensee has no further operational need, the no-action alternative is not further considered.

Conclusion

The NRC staff has concluded that the proposed action will not significantly impact the quality of the human environment, and that the proposed action is the preferred alternative.

Agencies and Persons Consulted

The NRC contacted the California Department of Public Health concerning this request. There were no comments, concerns or objections from the State official.

A public meeting to obtain comments on the release approval request was announced on the NRC public meeting Web site on July 7, 2015 (ADAMS Accession No. ML15188A344). A notice of GEH's request to release the 247-hectare (610-acre) parcel and the public meeting, including a request for comment, was also published in the Tri-Valley Herald, Livermore, CA on July 15, 2015 (ADAMS Accession No. ML15292A519). The NRC staff published a notice of the receipt of GEH's request, including a request for comment, in the **Federal Register** on July 20, 2015 (80 FR 42846). The NRC staff conducted the public meeting in Pleasanton, CA on July 22, 2015. A summary of the public meeting, which includes copies of the presentations made and a copy of the transcript of the meeting, is available in ADAMS at Accession No. ML15260A199. No comments were made on the Federal Rulemaking Web site, or were received by mail or email, and all questions asked at the meeting were answered in the meeting.

III. Finding of No Significant Impact

The NRC staff has prepared this EA as part of its review of the proposed action. On the basis of this EA, the NRC finds that there are no significant environmental impacts from the proposed action, and that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined that a finding of no significant impact (FONSI) is appropriate. In accordance with 10 CFR 51.32(a)(4), this FONSI incorporates the EA set forth in this notice by reference.

Dated at Rockville, Maryland, this 4th day of May 2016.

For the Nuclear Regulatory Commission.

John R. Tappert,

Director, Division of Decommissioning, Uranium Recovery, and Waste Programs, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2016–11206 Filed 5–11–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77778; File No. SR–BOX–2016–21]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule on the BOX Market LLC (“BOX”) Options Facility

May 6, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 29, 2016, BOX Options Exchange LLC (the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend the Fee Schedule on the BOX Market LLC (“BOX”) options facility. While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on May 2, 2016. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://boxexchange.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule for trading on BOX.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

PIP and COPIP Transactions

The Exchange first proposes to amend certain PIP and COPIP Transaction fees for Professional Customers, Broker Dealer and Market Makers in Section I.B of the BOX Fee Schedule. Specifically, the Exchange proposes to reduce the PIP and COPIP Order fees for Professional Customers and Broker Dealers from $0.37 to $0.15 and the PIP and COPIP Order Fees for Market Makers from $0.20 to $0.15.

The revised pricing structure for PIP and COPIP Transactions will be as follows:

	Account type			
	Public customer	Professional customer	Broker dealer	Market maker
PIP Order or COPIP Order	$0.00	$0.15	$0.15	$0.15.
Improvement Order in PIP or COPIP.	0.15	0.37	0.37	0.30.
Primary Improvement Order.	See Section I.B.1	See Section I.B.1	See Section I.B.1	See Section I.B.1.

The Exchange also proposes to make a clerical correction to Section I.B. of the BOX Fee Schedule. Specifically, the Primary Improvement Order row references ADV (Average Daily Volume). The Exchange no longer uses a Participant's ADV to determine volume based tiers for rebates and fees. Instead, the qualification thresholds are based on a percentage of the Participant's volume relative to the account type's overall total industry equity and ETF option volume. Therefore, the Exchange proposes to remove the reference ADV and only refer to Section I.B.1.

BVR

Under the BVR, the Exchange offers a tiered per contract rebate for all PIP Orders and COPIP orders of 100 contracts and under that do not trade solely with their contra order. Percentage thresholds are calculated on a monthly basis by totaling the Participant's PIP and COPIP volume submitted to BOX, relative to the total national Customer volume in multiply-listed options classes.

The Exchange proposes to establish an additional tier within the BVR for percentage thresholds of 1.250% and above. Participants whose PIP and COPIP volume submitted to BOX, relative to the total national Customer volume in multiply-listed options classes, is 1.250% or above will receive a per contract rebate of $0.18 in PIP transactions and $0.06 in COPIP transactions. With this, the Exchange also proposes to adjust the threshold in Tier 4 to end at 1.249%.

The new BVR set forth in Section I.B.2 of the BOX Fee Schedule will be as follows:

Tier	Percentage thresholds of national customer volume in multiply-listed options classes (monthly)	Per contract rebate (all account types)	
		PIP	*COPIP*
1	0.000% to 0.159%	($0.00)	($0.00)
2	0.160% to 0.339%	(0.04)	(0.02)
3	0.340% to 0.999%	(0.11)	(0.04)
4	1.000% to 1.249%	(0.14)	(0.06)
5	1.250% and Above	(0.18)	(0.06)

Complex Orders

The Exchange then proposes to adjust certain fees within the Complex Order Pricing Structure in Section III.A. of the BOX Fee Schedule (All Complex Orders). The Exchange recently introduced a pricing structure where Complex Orders are assessed transaction fees and credits dependent upon three factors: (i) The account type of the Participant submitting the order; (ii) whether the Participant is a liquidity provider or liquidity taker; and (iii) the account type of the contra party.[5]

The Exchange now proposes to adjust certain fees and rebates within the new pricing structure. Specifically, the Exchange proposes to replace the $0.10 credit applied to Market Makers, Professional Customer and Broker Dealers making liquidity against a Public Customer in Penny Pilot Classes. The Exchange proposes to instead assess Professional Customers or Broker Dealers $0.45 and Market Makers $0.40 when their Penny Pilot Complex Order makes liquidity against a Public Customer Complex Order.

For Complex Orders in Non-Penny Pilot Classes, the Exchange proposes to replace the $0.10 credit applied to Market Makers, Professional Customer and Broker Dealers making liquidity against a Public Customer. The Exchange proposes to instead assess Professional Customers and Broker Dealers $0.80 and Market Makers $0.75 when their Non-Penny Pilot Complex Order makes liquidity against a Public Customer Complex Order.

The revised Complex Order Pricing Structure will be as follows:

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[5] *See* Securities Exchange Act Release No. 77568 (April 8, 2016), 81 FR 22151 (April 14, 2016) (SR–BOX–2016–15).

Account type	Contra party	Penny pilot classes		Non-penny pilot classes	
		Maker fee/ credit	Taker fee/ credit	Maker fee/ credit	Taker fee/ credit
Public Customer	Public Customer	$0.00	$0.00	$0.00	$0.00
	Professional Customer/Broker Dealer	(0.35)	(0.35)	(0.70)	(0.70)
	Market Maker	(0.35)	(0.35)	(0.70)	(0.70)
Professional Customer or Broker Dealer.	Public Customer	0.45	0.45	0.80	0.80
	Professional Customer/Broker Dealer	(0.10)	0.30	(0.10)	0.45
	Market Maker	(0.10)	0.30	(0.10)	0.45
Market Maker	Public Customer	0.40	0.40	0.75	0.75
	Professional Customer/Broker Dealer	(0.10)	0.30	(0.10)	0.45
	Market Maker	(0.10)	0.30	(0.10)	0.45

For example, if a Market Maker's Complex Order in a Penny Pilot Class interacted with a Public Customer's Complex Order, regardless of whether the Complex Order was making or taking liquidity, the Market Maker would now be charged $0.40 and the Public Customer would be credited $0.35.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act, in general, and Section 6(b)(4) and 6(b)(5)of the Act,[6] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among BOX Participants and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that reducing the PIP and COPIP Order Fees to $0.15 for Market Makers, Professional Customers and Broker Dealers is reasonable. Reducing these fees is meant to encourage auction order flow to the Exchange, which will benefit all market participants on the Exchange. BOX believes the $0.15 fee is equitable and not unfairly discriminatory, as it applies to all Market Marker, Professional Customers and Broker Dealers submitting PIP and COPIP Orders to these auction mechanisms. Further, the Exchange believes it is equitable and not unfairly discriminatory to charge Public Customers less than Non-Public Customers for their PIP and COPIP Orders. The practice of incentivizing increased Public Customer order flow is common in the options markets.

The Exchange believes the proposed amendments to the BVR in Section I.B.2 of the BOX Fee Schedule are reasonable, equitable and non-discriminatory. The BVR was adopted to attract Public Customer order flow to the Exchange by offering these Participants incentives to submit their PIP and COPIP Orders to the Exchange and the Exchange believes it is appropriate to now amend the BVR. The Exchange believes it is equitable and not unfairly discriminatory to establish an additional tier within the BVR, as all Participants have the ability to qualify for a rebate, and rebates are provided equally to qualifying Participants. Finally, the Exchange believes it is reasonable and appropriate to continue to provide incentives for Public Customers, which will result in greater liquidity and ultimately benefit all Participants trading on the Exchange.

BOX believes it is reasonable, equitable and not unfairly discriminatory to adjust the monthly Percentage Thresholds of National Customer Volume in Multiply-Listed Options Classes. The volume thresholds and applicable rebates are meant to incentivize Participants to direct order flow to the Exchange to obtain the benefit of the rebate, which will in turn benefit all market participants by increasing liquidity on the Exchange. Other exchanges employ similar incentive programs,[7] and the Exchange believes that the proposed changes to the volume thresholds and rebates are reasonable and competitive when compared to incentive structures at other exchanges.

The Exchange believes amending the Complex Order pricing structure is reasonable, equitable and not unfairly discriminatory. The fee structure for Complex Orders was recently adopted and the Exchange believes it is now appropriate to adjust certain fees and credits. The Complex Order fee structure is generally intended to attract order flow to the Exchange by offering all market participants incentives to submit their Complex Orders to the Exchange.

The Exchange believes that the proposed fees for Professional Customers, Broker Dealers and Market Makers interacting with Public Customer Complex Orders are reasonable. A Professional Customer or Broker Dealer interacting against a Public Customer will now be charged $0.45 in Penny Pilot Classes and $0.80 Non-Penny Pilot Classes, regardless if it is making or taking liquidity. A Market Maker interacting against a Public Customer will now be charged $0.40 in Penny Pilot Classes and $0.75 Non-Penny Pilot Classes, regardless of whether it is making or taking liquidity. The Exchange believes these proposed Complex Order fees remain competitive when compared to the Complex Order fees on another exchange.[8]

The Exchange believes that charging Professional Customers and Broker Dealers higher fees than Public Customers for Complex Orders is equitable and not unfairly discriminatory. Professional Customers, while Public Customers by virtue of not being Broker Dealers, generally engage in trading activity more similar to Broker Dealer proprietary trading accounts (submitting more than 390 standard orders per day on average). The Exchange believes that the higher level of trading activity from these Participants will draw a greater amount of BOX system resources than that of non-professional, Public Customers. Because this higher level of trading activity will result in greater ongoing operational costs, the Exchange aims to recover its costs by assessing Professional Customers and Broker Dealers higher fees for transactions.

The Exchange also believes it is equitable and not unfairly discriminatory for BOX Market Makers to be assessed lower fees than

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[6] 15 U.S.C. 78f(b)(4) and (5).

[7] *See* Section B of the PHLX Pricing Schedule entitled "Customer Rebate Program;" ISE Gemini's Qualifying Tier Thresholds (page 6 of the ISE Gemini Fee Schedule); and CBOE's Volume Incentive Program (VIP).

[8] Comparative Complex Order fees at another exchanges [sic] range from $0.30 [sic] to $0.88. *See* Section II of the International Securities Exchange ("ISE") Schedule of Fees entitled "Complex Order Fees and Rebates."

Professional Customers and Broker Dealers for certain Complex Order executions because of the significant contributions to overall market quality that Market Makers provide. Specifically, Market Makers can provide higher volumes of liquidity and lowering their fees will help attract a higher level of Market Maker order flow to the BOX Book and create liquidity, which the Exchange believes will ultimately benefit all Participants trading on BOX. As such, the Exchange believes it is appropriate that Market Makers be charged lower transaction fees than Professional Customers and Broker Dealers for certain Complex Order executions.

The Exchange also believes it is reasonable, equitable and not unfairly discriminatory to charge Non-Public Customers a higher fee when their Complex Order interacts with a Public Customer's Complex Order, when compared to the fee assessed when their Complex Order interacts with a Non-Public Customer's Complex Order. To attract Public Customer order flow, Public Customers are given credit when their Complex Order executes against a non-Public Customer. The securities markets generally, and BOX in particular, have historically aimed to improve markets for investors and develop various features within the market structure for Public Customer benefit. Similar to payment for order flow and other pricing models that have been adopted by the Exchange and other exchanges to attract Public Customer order flow, the Exchange increases fees to non-Public Customers to provide incentives for Public Customers. The Exchange believes that providing incentives for Complex Orders by Public Customers is reasonable and, ultimately, will benefit all Participants trading on the Exchange by attracting Public Customer order flow.

Finally, the Exchange also believes it is reasonable to charge Professional Customers, Broker Dealers, and Market Makers less for certain executions in Penny Pilot issues compared to Non-Penny Pilot issues because these classes are typically more actively traded; assessing lower fees will further incentivize order flow in Penny Pilot issues on the Exchange, ultimately benefiting all Participants trading on BOX.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange is simply proposing to reduce PIP and COPIP Order fees and establish a new qualification tier in the BVR. The Exchange believes doing so will increase intermarket and intramarket competition by incenting Participants to direct their order flow to the exchange, which benefits all participants by providing more trading opportunities and improves competition on the Exchange. The Exchange also believes amending certain Complex Order fees and credits will enhance competition between exchanges because it is designed to allow the Exchange to better compete with other exchanges for Complex Order flow.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing exchanges. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act[9] and Rule 19b–4(f)(2) thereunder,[10] because it establishes or changes a due, or fee.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BOX–2016–21 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BOX–2016–21. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2016–21, and should be submitted on or before June 2, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–11153 Filed 5–11–16; 8:45 am]

BILLING CODE 8011–01–P

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[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77779; File No. TP 16–06]

Order Granting Limited Exemptions From Exchange Act Rule 10b–17 and Rules 101 and 102 of Regulation M to IndexIQ ETF Trust, IQ Enhanced Core Bond U.S. ETF, IQ Enhanced Core Plus Bond U.S. ETF, IQ Leaders Bond Allocation Tracker ETF, and IQ Leaders GTAA Tracker ETF, Pursuant to Exchange Act Rule 10b–17(b)(2) and Rules 101(d) and 102(e) of Regulation M

May 6, 2016.

By letter dated May 6, 2016 (the "Letter"), as supplemented by conversations with the staff of the Division of Trading and Markets, counsel for IndexIQ ETF Trust (the "Trust"), on behalf of the Trust, the IQ Enhanced Core Bond U.S. ETF, IQ Enhanced Core Plus Bond U.S. ETF, IQ Leaders Bond Allocation Tracker ETF, and IQ Leaders GTAA Tracker ETF (each, a "Fund" and collectively the "Funds"), NYSE Arca or any national securities exchange on or through which shares issued by the Funds ("Shares") may subsequently trade, ALPS Distributors, Inc. (the "Distributor"), and persons or entities engaging in transactions in Shares (collectively, the "Requestors"), requested exemptions, or interpretive or no-action relief, from Rule 10b–17 of the Securities Exchange Act of 1934, as amended ("Exchange Act"), and Rules 101 and 102 of Regulation M, in connection with secondary market transactions in Shares and the creation or redemption of aggregations of Shares of at least 50,000 shares ("Creation Units").

The Trust is registered with the Securities and Exchange Commission ("Commission") under the Investment Company Act of 1940, as amended ("1940 Act"), as an open-end management investment company. Each Fund is an index fund that seeks to track, as closely as possible, before fees and expenses, the performance of its stated index by holding a portfolio of investments selected to correspond generally to the price and yield performance of such index.

The IQ Enhanced Core Bond U.S. ETF and the IQ Enhanced Core Plus Bond U.S. ETF seek investment results that correspond (before fees and expenses) generally to the price and yield performance of their indices, the IQ Enhanced Core Bond U.S. Index and IQ Enhanced Core Plus Bond U.S. Index, respectively. These indices were designed to weight each of the various sectors of the investment grade fixed income market (and, in the case of the IQ Enhanced Core Plus Bond U.S. Index, the high yield fixed income securities market) based on each index's overall level of risk as measured by volatility and the total return momentum of each fixed income sector, so that each index will overweight fixed income sectors with high momentum and underweight fixed income sectors with low momentum, with constraints to maintain sector diversification.

The IQ Leaders Bond Allocation Tracker ETF and the IQ Leaders GTAA Tracker ETF seek investment results that correspond (before fees and expenses) generally to the price and yield performance of their indices, the IQ Leaders Bond Allocation Index and IQ Leaders GTAA Index, respectively. The IQ Leaders Bond Allocation Index seeks to track the "beta" portion of the returns of the ten leading bond mutual funds pursuing a global bond strategy and the IQ Leaders GTAA Index seeks to track the beta portion of the returns of the ten leading global allocation mutual funds based on fund performance and fund asset size.[1]

At least 80% of each Fund's portfolio holdings are, and will be, shares of some or all of the exchange-traded products ("ETPs") that are the index constituents of its stated index. Some or all of the remaining 20% may be invested in securities that are not index constituents which the advisor believes will help the Fund track its index, as well as cash, cash equivalents and various types of financial instruments including, but not limited to, futures contracts, swap agreements, forward contracts, reverse repurchase agreements, and options on securities, indices, and futures contracts. In no case will a Fund hold any non-ETP equity security issued by a single issuer in excess of 20% of such Fund's portfolio holdings.

Accordingly, each Fund intends to operate primarily as an "ETF of ETFs." Except for the fact that each Fund intends to operate primarily as an ETF of ETFs, each Fund will operate in a manner very similar to that of the ETPs held in its portfolio.

The Requestors represent, among other things, the following:

- Shares of each Fund will be issued by the Trust, an open-end management investment company that is registered with the Commission;
- The Trust will continuously redeem Creation Units at net asset value ("NAV"), and the secondary market price of the Shares should not vary substantially from the NAV of such Shares;
- Shares of each Fund will be listed and traded on the NYSE Arca (the "Exchange") or other exchange in accordance with exchange listing standards that are, or will become, effective pursuant to Section 19(b) of the Exchange Act;
- Each ETP in which each Fund is invested will meet all conditions set forth in a relevant class relief letter,[2] or will have received individual relief from the Commission;
- All of the components of each Fund's underlying index will have publicly available last sale trade information;
- The intra-day proxy value of each Fund per share and the value of each Index will be publicly disseminated by a major market data vendor throughout the trading day;
- On each business day before the opening of business on the Exchange, each Fund's custodian, through the National Securities Clearing Corporation, will make available the list of the names and the numbers of securities and other assets of the Fund's portfolio that will be applicable that day to creation and redemption requests;
- The Exchange or other market information provider will disseminate every 15 seconds throughout the trading day through the facilities of the Consolidated Tape Association an amount representing the current value of the cash and securities held in the portfolio of a Fund but does not reflect corporate actions, expenses, and other adjustments made to such portfolio throughout the day ("Estimated NAV");
- At least 80% of each Fund's portfolio holdings are, and will be, shares of some or all of the ETPs that are the index constituents of its stated index;
- Each Fund will invest in securities that will facilitate an effective and

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[1] The global allocation mutual funds invest in a combination of equity, fixed-income, and money market securities of U.S. and foreign issuers, and may also invest in other asset classes such as commodities.

[2] Letter from Catherine McGuire, Esq., Chief Counsel, Division of Market Regulation, to the Securities Industry Association Derivative Products Committee (Nov. 21, 2005); Letter from Racquel L. Russell, Branch Chief, Division of Market Regulation, to George T. Simon, Esq., Foley & Lardner LLP (June 21, 2006); Letter from James A. Brigagliano, Acting Associate Director, Division of Market Regulation, to Stuart M. Strauss, Esq., Clifford Chance US LLP (Oct. 24, 2006); Letter from James A. Brigagliano, Associate Director, Division of Market Regulation, to Benjamin Haskin, Esq., Willkie. Farr & Gallagher LLP (Apr. 9, 2007); or Letter from Josephine Tao, Assistant Director, Division of Trading and Markets, to Domenick Pugliese, Esq., Paul, Hastings, Janofsky and Walker LLP (June 27, 2007). *See also* Staff Legal Bulletin No. 9, "Frequently Asked Questions About Regulation M" (Apr. 12, 2002) (regarding actively-managed ETFs).

efficient arbitrage mechanism and the ability to create workable hedges;

- The Requestors believe that arbitrageurs can be expected to take advantage of price variations between each Fund's market price and its NAV;
- The arbitrage mechanism will be facilitated by the transparency of each Fund's portfolio and the availability of the Estimated NAV, the liquidity of securities and other assets held by each Fund, and the ability to acquire such securities, as well as arbitrageurs' ability to create workable hedges; and
- A close alignment between the market price of Shares and each Fund's NAV is expected.

Regulation M

While redeemable securities issued by an open-end management investment company are excepted from the provisions of Rule 101 and 102 of Regulation M, the Requestors may not rely upon that exception for the Shares.[3] However, we find that it is appropriate in the public interest, and is consistent with the protection of investors, to grant a limited exemption from Rules 101 and 102 to persons who may be deemed to be participating in a distribution of Shares and the Fund as described in more detail below.

Rule 101 of Regulation M

Generally, Rule 101 of Regulation M is an anti-manipulation rule that, subject to certain exceptions, prohibits any "distribution participant" and its "affiliated purchasers" from bidding for, purchasing, or attempting to induce any person to bid for or purchase, any security which is the subject of a distribution until after the applicable restricted period, except as specifically permitted in the rule. Rule 100 of Regulation M defines "distribution" to mean any offering of securities that is distinguished from ordinary trading transactions by the magnitude of the offering and the presence of special selling efforts and selling methods. The provisions of Rule 101 of Regulation M apply to underwriters, prospective underwriters, brokers, dealers, or other persons who have agreed to participate or are participating in a distribution of securities. The Shares are in a continuous distribution and, as such, the restricted period in which distribution participants and their affiliated purchasers are prohibited from bidding for, purchasing, or attempting to induce others to bid for or purchase, extends indefinitely.

Based on the representations and facts presented in the Letter, particularly that the Trust is a registered open-end management investment company that will continuously redeem at the NAV Creation Unit size aggregations of the Shares of each Fund and that a close alignment between the market price of Shares and each Fund's NAV is expected, the Commission finds that it is appropriate in the public interest, and consistent with the protection of investors, to grant the Trust an exemption under paragraph (d) of Rule 101 of Regulation M with respect to each Fund, thus permitting persons participating in a distribution of Shares of each Fund to bid for or purchase such Shares during their participation in such distribution.[4]

Rule 102 of Regulation M

Rule 102 of Regulation M prohibits issuers, selling security holders, or any affiliated purchaser of such person from bidding for, purchasing, or attempting to induce any person to bid for or purchase a covered security during the applicable restricted period in connection with a distribution of securities effected by or on behalf of an issuer or selling security holder.

Based on the representations and facts presented in the Letter, particularly that the Trust is a registered open-end management investment company that will redeem at the NAV Creation Units of Shares of each Fund and that a close alignment between the market price of Shares and each Fund's NAV is expected, the Commission finds that it is appropriate in the public interest, and consistent with the protection of investors, to grant the Trust an exemption under paragraph (e) of Rule 102 of Regulation M with respect to the Funds, thus permitting each Fund to redeem Shares of each Fund during the continuous offering of such Shares.

Rule 10b–17

Rule 10b–17, with certain exceptions, requires an issuer of a class of publicly traded securities to give notice of certain specified actions (for example, a dividend distribution) relating to such class of securities in accordance with Rule 10b–17(b). Based on the representations and facts in the Letter, and subject to the conditions below, we find that it is appropriate in the public interest, and consistent with the protection of investors, to grant the Trust a conditional exemption from Rule 10b–17 because market participants will receive timely notification of the existence and timing of a pending distribution, and thus the concerns that the Commission raised in adopting Rule 10b–17 will not be implicated.[5]

Conclusion

It is hereby ordered, pursuant to Rule 101(d) of Regulation M, that the Trust, based on the representations and the facts presented in the Letter, is exempt from the requirements of Rule 101 with respect to each Fund, thus permitting persons who may be deemed to be participating in a distribution of Shares of each Fund to bid for or purchase such Shares during their participation in such distribution.

It is further ordered, pursuant to Rule 102(e) of Regulation M, that the Trust, based on the representations and the facts presented in the Letter, is exempt from the requirements of Rule 102 with respect to each Fund, thus permitting each Fund to redeem Shares of each Fund during the continuous offering of such Shares.

It is further ordered, pursuant to Rule 10b–17(b)(2), that the Trust, based on the representations and the facts presented in the Letter, and subject to the conditions below, is exempt from the requirements of Rule 10b–17 with respect to transactions in the Shares of each Fund.

This exemptive relief is subject to the following conditions:

- The Trust will comply with Rule 10b–17 except for Rule 10b–17(b)(1)(v)(a) and (b); and
- The Trust will provide the information required by Rule 10b–17(b)(1)(v)(a) and (b) to the Exchange as soon as practicable before trading begins on the ex-dividend date, but in no event later than the time when the Exchange last accepts information relating to distributions on the day before the ex-dividend date.

This exemptive relief is subject to modification or revocation at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act. Persons relying upon this exemptive relief shall discontinue transactions involving the Shares of the Funds, pending presentation of the facts for the Commission's consideration, in the event that any material change occurs with respect to any of the facts or representations made by the Requestors and, consistent with all preceding letters, particularly with respect to the close alignment between the market price of Shares and each Fund's NAV. In addition, persons relying on this exemptive relief are directed to the anti-fraud and anti-manipulation provisions of the Exchange Act, particularly Sections 9(a) and 10(b), and Rule 10b–5 thereunder. Responsibility for compliance with these and any other applicable provisions of the federal securities laws must rest with the persons relying on this exemptive relief.

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[3] While ETFs operate under exemptions from the definitions of "open-end company" under Section 5(a)(1) of the 1940 Act and "redeemable security" under Section 2(a)(32) of the 1940 Act, each Fund and its securities do not meet those definitions.

[4] Additionally, we confirm the interpretation that a redemption of Creation Unit size aggregations of Shares of each Fund and the receipt of securities in exchange by a participant in a distribution of Shares of each Fund would not constitute an "attempt to induce any person to bid for or purchase, a covered security during the applicable restricted period" within the meaning of Rule 101 of Regulation M and, therefore, would not violate that rule.

[5] We also note that timely compliance with Rule 10b–17(b)(1)(v)(a) and (b) would be impractical because it is not possible for the Funds to accurately project ten days in advance what dividend, if any, would be paid on a particular record date. Further, the Commission finds, based upon the representations of the Requestors in the Letter, that the provision of the notices as described in the Letter would not constitute a manipulative or deceptive device or contrivance comprehended within the purpose of Rule 10b–17.

This order should not be considered a view with respect to any other question that the proposed transactions may raise, including, but not limited to the adequacy of the disclosure concerning, and the applicability of other federal or state laws to, the proposed transactions.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–11154 Filed 5–11–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77781; File No. SR–NASDAQ–2016–064]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change Relating to the Listing and Trading of the Shares of the First Trust Strategic Mortgage REIT ETF of First Trust Exchange-Traded Fund VIII

May 6, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 3, 2016, The NASDAQ Stock Market LLC ("Nasdaq" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in in Items I and II below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to list and trade the shares of the First Trust Strategic Mortgage REIT ETF (the "Fund") of First Trust Exchange-Traded Fund VIII (the "Trust") under Nasdaq Rule 5735 ("Managed Fund Shares").[3] The shares of the Fund are collectively referred to herein as the "Shares."

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade the Shares of the Fund under Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares[4] on the Exchange. The Fund will be an actively-managed exchange-traded fund ("ETF"). The Shares will be offered by the Trust, which was established as a Massachusetts business trust on February 22, 2016.[5] The Trust is registered with the Commission as an investment company and has filed a registration statement on Form N–1A ("Registration Statement") with the Commission.[6] The Fund will be a series of the Trust.

First Trust Advisors L.P. will be the investment adviser ("Adviser") to the Fund. First Trust Portfolios L.P. (the "Distributor") will be the principal underwriter and distributor of the Fund's Shares. The Bank of New York Mellon Corporation ("BNY") will act as the administrator, accounting agent, custodian and transfer agent to the Fund.

Paragraph (g) of Rule 5735 provides that if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a "fire wall" between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.[7] In addition, paragraph (g) further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the open-end fund's portfolio. Rule 5735(g) is similar to Nasdaq Rule 5705(b)(5)(A)(i); however, paragraph (g) in connection with the establishment of a "fire wall" between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. The Adviser is not a broker-dealer, but it is affiliated with the Distributor, a broker-dealer, and has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio. In addition, personnel who make decisions on the Fund's portfolio composition will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the Fund's portfolio. In the event (a) the Adviser or any sub-adviser registers as a broker-dealer, or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with another broker-dealer, it will implement a fire wall with respect to its relevant personnel and/or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio. The Fund currently does not intend to use a sub-adviser.

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[6] 17 CFR 200.30–3(a)(6) and (9).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission approved Nasdaq Rule 5735 in Securities Exchange Act Release No. 57962 (June 13, 2008), 73 FR 35175 (June 20, 2008) (SR–NASDAQ–2008–039). There are already multiple actively-managed funds listed on the Exchange; *see, e.g.*, Securities Exchange Act Release Nos. 72506 (July 1, 2014), 79 FR 38631 (July 8, 2014) (SR–NASDAQ–2014–050) (order approving listing and trading of First Trust Strategic Income ETF); 69464 (April 26, 2013), 78 FR 25774 (May 2, 2013) (SR–NASDAQ–2013–036) (order approving listing and trading of First Trust Senior Loan Fund); and 66489 (February 29, 2012), 77 FR 13379 (March 6, 2012) (SR–NASDAQ–2012–004) (order approving listing and trading of WisdomTree Emerging Markets Corporate Bond Fund). The Exchange believes the proposed rule change raises no significant issues not previously addressed in those prior Commission orders.

[4] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (the "1940 Act") organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Index Fund Shares, listed and traded on the Exchange under Nasdaq Rule 5705, seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[5] The Commission has issued an order, upon which the Trust may rely, granting certain exemptive relief under the 1940 Act. *See* Investment Company Act Release No. 28468 (October 27, 2008) (File No. 812–13477) (the "Exemptive Relief").

[6] *See* Registration Statement on Form N–1A for the Trust, dated March 14, 2016 (File Nos. 333–210186 and 811–23147). The descriptions of the Fund and the Shares contained herein are based, in part, on information in the Registration Statement.

[7] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the "Advisers Act"). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual

The Fund intends to qualify each year as a regulated investment company under Subchapter M of the Internal Revenue Code of 1986, as amended.

First Trust Strategic Mortgage REIT ETF

Principal Investments

The investment objective of the Fund will be to generate high current income. Under normal market conditions,[8] the Fund will seek to achieve its investment objective by investing at least 80% of its net assets (including investment borrowings) in the exchange-traded common shares of U.S. exchange-traded mortgage real estate investment trusts ("mortgage REITs"). In general terms, a mortgage REIT makes loans to developers and owners of property and invests primarily in mortgages and similar real estate interests, and includes companies or trusts that are primarily engaged in the purchasing or servicing of commercial or residential mortgage loans or mortgage-related securities, which may include mortgage-backed securities issued by private issuers and those issued or guaranteed by U.S. Government agencies, instrumentalities or sponsored entities.

Other Investments

The Fund may invest (in the aggregate) up to 20% of its net assets in the following securities and instruments.

The Fund may invest in the exchange-traded preferred shares of U.S. exchange-traded mortgage REITs.

The Fund may invest in (i) U.S. exchange-traded equity and preferred securities and (ii) domestic over-the-counter ("OTC") preferred securities, in each case, of companies engaged in the U.S. real estate industry (other than mortgage REITs) (collectively, "Real Estate Companies").

The Fund may invest in mortgage-backed securities,[9] and such investments may, from time to time, include investments in to-be-announced transactions[10] and mortgage dollar rolls[11] (collectively, "Mortgage-Related Instruments").

The Fund may invest in exchange-traded and OTC options on mortgage REITs and Real Estate Companies; OTC options on mortgage TBA transactions; exchange-traded U.S. Treasury and Eurodollar futures contracts; exchange-traded and OTC interest rate swap agreements; exchange-traded options on U.S. Treasury and Eurodollar futures contracts; and exchange-traded and OTC options on interest rate swap agreements. The use of these derivative transactions may allow the Fund to obtain net long or short exposures to selected interest rates. These derivatives may also be used to hedge risks, including interest rate risks and credit risks, associated with the Fund's portfolio investments. The Fund's investments in derivative instruments will be consistent with the Fund's investment objective and the 1940 Act and will not be used to seek to achieve a multiple or inverse multiple of an index. The Fund will only enter into transactions in OTC derivatives (including OTC options on mortgage REITs, Real Estate Companies and mortgage TBA transactions; OTC interest rate swap agreements; and OTC options on interest rate swap agreements) with counterparties that the Adviser reasonably believes are capable of performing under the applicable contract or agreement.[12]

The Fund may invest in short-term debt securities and other short-term debt instruments (described below), as well as cash equivalents, or it may hold cash.

(who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[8] The term "under normal market conditions" as used herein includes, but is not limited to, the absence of adverse market, economic, political or other conditions, including extreme volatility or trading halts in the securities markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or *force majeure* type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

On a temporary basis, including for defensive purposes, during the initial invest-up period and during periods of high cash inflows or outflows, the Fund may depart from its principal investment strategies; for example, it may hold a higher than normal proportion of its assets in cash. During such periods, the Fund may not be able to achieve its investment objective. The Fund may adopt a defensive strategy when the Adviser believes securities in which the Fund normally invests have elevated risks due to political or economic factors and in other extraordinary circumstances.

[9] Mortgage-backed securities, which are securities that directly or indirectly represent a participation in, or are secured by and payable from, mortgage loans on real property, will consist of: (1) Residential mortgage-backed securities ("RMBS"); (2) commercial mortgage-backed securities ("CMBS"); (3) stripped mortgage-backed securities ("SMBS"), which are mortgage-backed securities where mortgage payments are divided between paying the loan's principal and paying the loan's interest; (4) collateralized mortgage obligations ("CMOs") and real estate mortgage investment conduits ("REMICs"), which are mortgage-backed securities that are divided into multiple classes, with each class being entitled to a different share of the principal and interest payments received from the pool of underlying assets.

[10] A to-be-announced ("TBA") transaction is a method of trading mortgage-backed securities. In a TBA transaction, the buyer and seller agree upon general trade parameters such as agency, settlement date, par amount, and price. The actual pools delivered generally are determined two days prior to the settlement date.

[11] In a mortgage dollar roll, the Fund will sell (or buy) mortgage-backed securities for delivery on a specified date and simultaneously contract to repurchase (or sell) substantially similar (same type, coupon and maturity) securities on a future date. During the period between a sale and repurchase, the Fund will forgo principal and interest paid on the mortgage-backed securities. The Fund will earn or lose money on a mortgage dollar roll from any difference between the sale price and the future purchase price. In a sale and repurchase, the Fund will also earn money on the interest earned on the cash proceeds of the initial sale. The Fund intends to enter into mortgage dollar rolls only with high quality securities dealers and banks, as determined by the Adviser.

[12] The Fund will seek, where possible, to use counterparties, as applicable, whose financial status is such that the risk of default is reduced; however, the risk of losses resulting from default is still possible. The Adviser will evaluate the creditworthiness of counterparties on an ongoing basis. In addition to information provided by credit agencies, the Adviser's analysis will evaluate each approved counterparty using various methods of analysis and may consider the Adviser's past experience with the counterparty, its known disciplinary history and its share of market participation.

The percentage of the Fund invested in such holdings or held in cash will vary and will depend on several factors, including market conditions. The Fund may invest in the following short-term debt instruments:[13] (1) Fixed rate and floating rate U.S. government securities, including bills, notes and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. government agencies or instrumentalities; (2) certificates of deposit issued against funds deposited in a bank or savings and loan association; (3) bankers' acceptances, which are short-term credit instruments used to finance commercial transactions; (4) repurchase agreements,[14] which involve purchases of debt securities; (5) bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest; and (6) commercial paper, which is short-term unsecured promissory notes.[15]

The Fund may invest (but only, in the aggregate, up to 10% of its net assets) in the securities of money market funds and other ETFs[16] that, in each case, will be investment companies registered under the 1940 Act.

Investment Restrictions

The Fund may enter into short sales as part of its overall portfolio management strategies or to offset a potential decline in the value of a security; however, the Fund will not engage in short sales with respect to more than 30% of the value of its net assets. To the extent required under applicable federal securities laws, rules, and interpretations thereof, the Fund will "set aside" liquid assets or engage in other measures to "cover" open positions and short positions held in connection with the foregoing types of transactions.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser.[17] The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.[18]

The Fund may not invest 25% or more of the value of its total assets in securities of issuers in any one industry.[19] This restriction does not apply to securities of issuers in the real estate sector, including real estate investment trusts; obligations issued or guaranteed by the U.S. government, its agencies or instrumentalities; or securities of other investment companies. The Fund will be concentrated in the real estate sector.

Creation and Redemption of Shares

The Fund will issue and redeem Shares on a continuous basis at net asset value ("NAV")[20] only in large blocks of Shares ("Creation Units") in transactions with authorized participants, generally including broker-dealers and large institutional investors ("Authorized Participants"). Creation Units generally will consist of 50,000 Shares, although this may change from time to time. Creation Units, however, are not expected to consist of less than 50,000 Shares. As described in the Registration Statement and consistent with the Exemptive Relief, the Fund will issue and redeem Creation Units in exchange for an in-kind portfolio of instruments and/or cash in lieu of such instruments (the "Creation Basket").[21] In addition, if there is a difference between the NAV attributable to a Creation Unit and the market value of the Creation Basket exchanged for the Creation Unit, the party conveying instruments with the lower value will pay to the other an amount in cash equal to the difference (referred to as the "Cash Component").

Creations and redemptions must be made by or through an Authorized Participant that has executed an agreement that has been agreed to by the Distributor and BNY with respect to creations and redemptions of Creation Units. All standard orders to create Creation Units must be received by the transfer agent no later than the closing time of the regular trading session on the NYSE (ordinarily 4:00 p.m., Eastern

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[13] Short-term debt instruments are issued by issuers having a long-term debt rating of at least A by Standard & Poor's Ratings Services, a Division of The McGraw-Hill Companies, Inc. ("S&P Ratings"), Moody's Investors Service, Inc. ("Moody's") or Fitch Ratings ("Fitch") and have a maturity of one year or less.

[14] The Fund intends to enter into repurchase agreements only with financial institutions and dealers believed by the Adviser to present minimal credit risks in accordance with criteria approved by the Board of Trustees of the Trust ("Trust Board"). The Adviser will review and monitor the creditworthiness of such institutions. The Adviser will monitor the value of the collateral at the time the transaction is entered into and at all times during the term of the repurchase agreement.

[15] The Fund may only invest in commercial paper rated A–1 or higher by S&P Ratings, Prime-1 or higher by Moody's or F1 or higher by Fitch.

[16] An ETF is an investment company registered under the 1940 Act that holds a portfolio of securities. Many ETFs are designed to track the performance of a securities index, including industry, sector, country and region indexes. ETFs included in the Fund will be listed and traded in the U.S. on registered exchanges. The Fund may invest in the securities of ETFs in excess of the limits imposed under the 1940 Act pursuant to exemptive orders obtained by other ETFs and their sponsors from the Commission. In addition, the Fund may invest in the securities of certain other investment companies in excess of the limits imposed under the 1940 Act pursuant to an exemptive order that the Trust has obtained from the Commission. *See* Investment Company Act Release No. 30377 (February 5, 2013) (File No. 812–13895). The ETFs in which the Fund may invest include Index Fund Shares (as described in Nasdaq Rule 5705), Portfolio Depository Receipts (as described in Nasdaq Rule 5705), and Managed Fund Shares (as described in Nasdaq Rule 5735). While the Fund may invest in inverse ETFs, the Fund will not invest in leveraged or inverse leveraged (*e.g.*, 2X or -3X) ETFs.

[17] In reaching liquidity decisions, the Adviser may consider the following factors: the frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace in which it trades (*e.g.*, the time needed to dispose of the security, the method of soliciting offers and the mechanics of transfer).

[18] The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. *See also* Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding "Restricted Securities"); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a-7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act of 1933).

[19] *See* Form N–1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests more than 25% of the value of its total assets in any one industry. *See, e.g.*, Investment Company Act Release No. 9011 (October 30, 1975), 40 FR 54241 (November 21, 1975).

[20] The NAV of the Fund's Shares generally will be calculated once daily Monday through Friday as of the close of regular trading on the New York Stock Exchange ("NYSE"), generally 4:00 p.m., Eastern Time (the "NAV Calculation Time"). NAV per Share will be calculated by dividing the Fund's net assets by the number of Fund Shares outstanding.

[21] It is expected that the Fund will typically issue and redeem Creation Units on an in-kind basis; however, subject to, and in accordance with, the provisions of the Exemptive Relief, the Fund may, at times, issue and redeem Creation Units on a cash (or partially cash) basis.

Time) (the "Closing Time") in each case on the date such order is placed in order for the creation of Creation Units to be effected based on the NAV of Shares as next determined on such date after receipt of the order in proper form. Shares may be redeemed only in Creation Units at their NAV next determined after receipt not later than the Closing Time of a redemption request in proper form by the Fund through the transfer agent and only on a business day.

The Fund's custodian, through the National Securities Clearing Corporation, will make available on each business day, prior to the opening of business of the Exchange, the list of the names and quantities of the instruments comprising the Creation Basket, as well as the estimated Cash Component (if any), for that day. The published Creation Basket will apply until a new Creation Basket is announced on the following business day prior to commencement of trading in the Shares.

Net Asset Value

The Fund's NAV will be determined as of Closing Time on each day the NYSE is open for trading. If the NYSE closes early on a valuation day, the NAV will be determined as of that time. NAV per Share will be calculated for the Fund by taking the value of the Fund's total assets, including interest or dividends accrued but not yet collected, less all liabilities, including accrued expenses and dividends declared but unpaid, and dividing such amount by the total number of Shares outstanding. The result, rounded to the nearest cent, will be the NAV per Share. All valuations will be subject to review by the Trust Board or its delegate.

The Fund's investments will be valued daily. As described more specifically below, investments traded on an exchange (*i.e.*, a regulated market), will generally be valued at market value prices that represent last sale or official closing prices. In addition, as described more specifically below, non-exchange traded investments will generally be valued using prices obtained from third-party pricing services (each, a "Pricing Service").[22] If, however, valuations for any of the Fund's investments cannot be readily obtained as provided in the preceding manner, or the Pricing Committee of the Adviser (the "Pricing Committee") [23] questions the accuracy or reliability of valuations that are so obtained, such investments will be valued at fair value, as determined by the Pricing Committee, in accordance with valuation procedures (which may be revised from time to time) adopted by the Trust Board (the "Valuation Procedures"), and in accordance with provisions of the 1940 Act. The Pricing Committee's fair value determinations may require subjective judgments about the value of an investment. The fair valuations attempt to estimate the value at which an investment could be sold at the time of pricing, although actual sales could result in price differences, which could be material.

Certain securities in which the Fund may invest will not be listed on any securities exchange or board of trade. Such securities will typically be bought and sold by institutional investors in individually negotiated private transactions that function in many respects like an OTC secondary market, although typically no formal market makers will exist. Certain securities, particularly debt securities, will have few or no trades, or trade infrequently, and information regarding a specific security may not be widely available or may be incomplete. Accordingly, determinations of the value of debt securities may be based on infrequent and dated information. Because there is less reliable, objective data available, elements of judgment may play a greater role in valuation of debt securities than for other types of securities.

The information summarized below is based on the Valuation Procedures as currently in effect; however, as noted above, the Valuation Procedures are amended from time to time and, therefore, such information is subject to change.

The following investments will typically be valued using information provided by a Pricing Service: (a) Mortgage-Related Instruments; (b) OTC derivatives (including OTC options on mortgage REITs, Real Estate Companies and mortgage TBA transactions; OTC interest rate swap agreements; and OTC options on interest rate swap agreements); (c) OTC preferred securities of Real Estate Companies; and (d) except as provided below, short-term U.S. government securities, commercial paper, and bankers' acceptances, all as set forth under "Other Investments" (collectively, "Short-Term Debt Instruments"). Debt instruments may be valued at evaluated mean prices, as provided by Pricing Services. Pricing Services typically value non-exchange-traded instruments utilizing a range of market-based inputs and assumptions, including readily available market quotations obtained from broker-dealers making markets in such instruments, cash flows, and transactions for comparable instruments. In pricing certain instruments, the Pricing Services may consider information about an instrument's issuer or market activity provided by the Adviser.

Short-Term Debt Instruments having a remaining maturity of 60 days or less when purchased will typically be valued at cost adjusted for amortization of premiums and accretion of discounts, provided the Pricing Committee has determined that the use of amortized cost is an appropriate reflection of value given market and issuer-specific conditions existing at the time of the determination.

Certificates of deposit and bank time deposits will typically be valued at cost.

Repurchase agreements will typically be valued as follows: Overnight repurchase agreements will be valued at amortized cost when it represents the best estimate of value. Term repurchase agreements (*i.e.*, those whose maturity exceeds seven days) will be valued at the average of the bid quotations obtained daily from at least two recognized dealers.

Common stocks and other equity securities (including mortgage REITs (both common and preferred shares); ETFs; and exchange-traded Real Estate Companies), as well as preferred securities of Real Estate Companies, that are listed on any exchange other than the Exchange will typically be valued at the last sale price on the exchange on which they are principally traded on the business day as of which such value is being determined. Such securities listed on the Exchange will typically be valued at the official closing price on the business day as of which such value is being determined. If there has been no sale on such day, or no official closing price in the case of securities traded on the Exchange, such securities will typically be valued using fair value pricing. Such securities traded on more than one securities exchange will be valued at the last sale price or official closing price, as applicable, on the business day as of which such value is being determined at the close of the exchange representing the principal market for such securities.

Money market funds will typically be valued at their net asset values as reported by such funds to Pricing Services.

Exchange-traded options on mortgage REITs and Real Estate Companies, exchange-traded U.S. Treasury and

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[22] The Adviser may use various Pricing Services or discontinue the use of any Pricing Services, as approved by the Trust Board from time to time.

[23] The Pricing Committee will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the Fund's portfolio.

Eurodollar futures contracts, exchange-traded interest rate swap agreements, exchange-traded options on U.S. Treasury and Eurodollar futures contracts, and exchange-traded options on interest rate swap agreements will typically be valued at the closing price in the market where such instruments are principally traded.

Availability of Information

The Fund's Web site (*www.ftportfolios.com*), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Web site will include the Shares' ticker, CUSIP and exchange information along with additional quantitative information updated on a daily basis, including, for the Fund: (1) Daily trading volume, the prior business day's reported NAV and closing price, mid-point of the bid/ask spread at the time of calculation of such NAV (the "Bid/Ask Price"),[24] and a calculation of the premium and discount of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Regular Market Session[25] on the Exchange, the Fund will disclose on its Web site the identities and quantities of the portfolio of securities and other assets (the "Disclosed Portfolio" as defined in Nasdaq Rule 5735(c)(2)) held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the business day.[26]

The Fund's disclosure of derivative positions in the Disclosed Portfolio will include sufficient information for market participants to use to value these positions intraday. On a daily basis, the Fund will disclose on the Fund's Web site the following information regarding each portfolio holding, as applicable to the type of holding: Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding, such as the type of swap); the identity of the security or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and percentage weighting of the holding in the Fund's portfolio. The Web site information will be publicly available at no charge.

In addition, for the Fund, an estimated value, defined in Rule 5735(c)(3) as the "Intraday Indicative Value," that reflects an estimated intraday value of the Fund's Disclosed Portfolio, will be disseminated. Moreover, the Intraday Indicative Value, available on the NASDAQ OMX Information LLC proprietary index data service,[27] will be based upon the current value for the components of the Disclosed Portfolio and will be updated and widely disseminated by one or more major market data vendors and broadly displayed at least every 15 seconds during the Regular Market Session. The Intraday Indicative Value will be based on quotes and closing prices from the securities' local market and may not reflect events that occur subsequent to the local market's close. Premiums and discounts between the Intraday Indicative Value and the market price may occur. This should not be viewed as a "real time" update of the NAV per Share of the Fund, which is calculated only once a day.

The dissemination of the Intraday Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and will provide a close estimate of that value throughout the trading day.

Investors will also be able to obtain the Fund's Statement of Additional Information ("SAI"), the Fund's annual and semi-annual reports (together, "Shareholder Reports"), and its Form N–CSR and Form N–SAR, filed twice a year. The Fund's SAI and Shareholder Reports will be available free upon request from the Fund, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *www.sec.gov.* Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via Nasdaq proprietary quote and trade services, as well as in accordance with the Unlisted Trading Privileges and the Consolidated Tape Association ("CTA") plans for the Shares. Quotation and last sale information for U.S. exchange-traded equity securities (including mortgage REITs, ETFs and exchange-traded Real Estate Companies) will be available from the exchanges on which they are traded as well as in accordance with any applicable CTA plans. Quotation and last sale information for U.S. exchange-traded options will be available via the Options Price Reporting Authority.

Pricing information for Mortgage-Related Instruments, OTC Real Estate Companies, Short-Term Debt Instruments, repurchase agreements, certificates of deposit, bank time deposits, OTC options on mortgage REITs, Real Estate Companies and mortgage TBA transactions, OTC interest rate swap agreements, and OTC options on interest rate swap agreements will be available from major broker-dealer firms and/or major market data vendors and/or Pricing Services. Pricing information for mortgage REITs (both common and preferred shares), exchange-traded Real Estate Companies, ETFs, exchange-traded options on mortgage REITs and Real Estate Companies, exchange-traded U.S. Treasury and Eurodollar futures contracts, exchange-traded interest rate swap agreements, exchange-traded options on U.S. Treasury and Eurodollar futures contracts, and exchange-traded options on interest rate swap agreements will be available from the applicable listing exchange and from major market data vendors. Money market funds are typically priced once each business day and their prices will be available through the applicable fund's Web site or from major market data vendors.

Additional information regarding the Fund and the Shares, including investment strategies, risks, creation and redemption procedures, fees, Fund holdings disclosure policies, distributions and taxes will be included in the Registration Statement.

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[24] The Bid/Ask Price of the Fund will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

[25] *See* Nasdaq Rule 4120(b)(4) (describing the three trading sessions on the Exchange: (1) Pre-Market Session from 4 a.m. to 9:30 a.m., Eastern Time; (2) Regular Market Session from 9:30 a.m. to 4 p.m. or 4:15 p.m., Eastern Time; and (3) Post-Market Session from 4 p.m. or 4:15 p.m. to 8 p.m., Eastern Time).

[26] Under accounting procedures to be followed by the Fund, trades made on the prior business day ("T") will be booked and reflected in NAV on the current business day ("T+1"). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[27] Currently, the NASDAQ OMX Global Index Data Service ("GIDS") is the Nasdaq global index data feed service, offering real-time updates, daily summary messages, and access to widely followed indexes and Intraday Indicative Values for ETFs. GIDS provides investment professionals with the daily information needed to track or trade Nasdaq indexes, listed ETFs, or third-party partner indexes and ETFs.

Initial and Continued Listing

The Shares will be subject to Rule 5735, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares. The Exchange represents that, for initial and continued listing, the Fund must be in compliance with Rule 10A–3 [28] under the Act. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Nasdaq will halt trading in the Shares under the conditions specified in Nasdaq Rules 4120 and 4121, including the trading pauses under Nasdaq Rules 4120(a)(11) and (12). Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the other assets constituting the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Rule 5735(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

Trading Rules

Nasdaq deems the Shares to be equity securities, thus rendering trading in the Shares subject to Nasdaq's existing rules governing the trading of equity securities. Nasdaq will allow trading in the Shares from 4:00 a.m. until 8:00 p.m., Eastern Time. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in Nasdaq Rule 5735(b)(3), the minimum price variation for quoting and entry of orders in Managed Fund Shares traded on the Exchange is $0.01.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and also the Financial Industry Regulatory Authority ("FINRA") on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[29] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and the exchange-traded securities and instruments held by the Fund (including mortgage REITs (both common and preferred shares); exchange-traded Real Estate Companies; ETFs; exchange-traded options on mortgage REITs and Real Estate Companies; exchange-traded U.S. Treasury and Eurodollar futures contracts; exchange-traded interest rate swap agreements; exchange-traded options on U.S. Treasury and Eurodollar futures contracts; and exchange-traded options on interest rate swap agreements) with other markets and other entities that are members of the Intermarket Surveillance Group ("ISG"),[30] and FINRA may obtain trading information regarding trading in the Shares and such exchange-traded securities and instruments held by the Fund from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and the exchange-traded securities and instruments held by the Fund from markets and other entities that are members of ISG, which includes securities and futures exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement. Moreover, FINRA, on behalf of the Exchange, will be able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's Trade Reporting and Compliance Engine ("TRACE").

At least 90% of the Fund's net assets that are invested in exchange-traded derivatives (including exchange-traded options on mortgage REITs and Real Estate Companies; exchange-traded U.S. Treasury and Eurodollar futures contracts; exchange-traded interest rate swap agreements; exchange-traded options on U.S. Treasury and Eurodollar futures contracts; and exchange-traded options on interest rate swap agreements) (in the aggregate) will be invested in instruments that trade in markets that are members of ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange. All of the Fund's net assets that are invested in exchange-traded equity securities (including mortgage REITs (both common and preferred shares); ETFs; and exchange-traded Real Estate Companies) (in the aggregate) will be invested in securities that trade in markets that are members of ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) Nasdaq Rule 2111A, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (3) how information regarding the Intraday Indicative Value and the Disclosed Portfolio is disseminated; (4) the risks involved in trading the Shares during the Pre-Market and Post-Market Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (5) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

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[28] *See* 17 CFR 240.10A–3.

[29] FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[30] For a list of the current members of ISG, *see www.isgportal.org.* The Exchange notes that not all components of the Disclosed Portfolio may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

Additionally, the Information Circular will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Information Circular will also disclose the trading hours of the Shares of the Fund and the applicable NAV Calculation Time for the Shares. The Information Circular will disclose that information about the Shares of the Fund will be publicly available on the Fund's Web site.

All statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares on the Exchange. In addition, the issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under the Nasdaq 5800 Series.

2. Statutory Basis

Nasdaq believes that the proposal is consistent with Section 6(b) of the Act in general and Section 6(b)(5) of the Act in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in Nasdaq Rule 5735. The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and also FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.

The Adviser is not a broker-dealer, but it is affiliated with the Distributor, a broker-dealer, and is required to implement a "fire wall" with respect to such broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Fund's portfolio. In addition, paragraph (g) of Nasdaq Rule 5735 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the open-end fund's portfolio.

FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and the exchange-traded securities and instruments held by the Fund (including mortgage REITs (both common and preferred shares); exchange-traded Real Estate Companies; ETFs; exchange-traded options on mortgage REITs and Real Estate Companies; exchange-traded U.S. Treasury and Eurodollar futures contracts; exchange-traded interest rate swap agreements; exchange-traded options on U.S. Treasury and Eurodollar futures contracts; and exchange-traded options on interest rate swap agreements) with other markets and other entities that are members of ISG, and FINRA may obtain trading information regarding trading in the Shares and such exchange-traded securities and instruments held by the Fund from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and the exchange-traded securities and instruments held by the Fund from markets and other entities that are members of ISG, which includes securities and futures exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement. Moreover, FINRA, on behalf of the Exchange, will be able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's TRACE.

At least 90% of the Fund's net assets that are invested in exchange-traded derivatives (including exchange-traded options on mortgage REITs and Real Estate Companies; exchange-traded U.S. Treasury and Eurodollar futures contracts; exchange-traded interest rate swap agreements; exchange-traded options on U.S. Treasury and Eurodollar futures contracts; and exchange-traded options on interest rate swap agreements) (in the aggregate) will be invested in instruments that trade in markets that are members of ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange. All of the Fund's net assets that are invested in exchange-traded equity securities (including mortgage REITs (both common and preferred shares); ETFs; and exchange-traded Real Estate Companies) (in the aggregate) will be invested in securities that trade in markets that are members of ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange.

The investment objective of the Fund will be to generate high current income. Under normal market conditions, the Fund will seek to achieve its investment objective by investing at least 80% of its net assets (including investment borrowings) in the exchange-traded common shares of U.S. exchange-traded mortgage REITs. The Fund may invest up to 20% of its net assets in the exchange-traded preferred shares of U.S. exchange-traded mortgage REITs. Additionally, the Fund may invest up to 20% of its net assets in derivative instruments (including exchange-traded and OTC options on mortgage REITs and Real Estate Companies; OTC options on mortgage TBA transactions; exchange-traded U.S. Treasury and Eurodollar futures contracts; exchange-traded and OTC interest rate swap agreements; exchange-traded options on U.S. Treasury and Eurodollar futures contracts; and exchange-traded and OTC options on interest rate swap agreements). The Fund's investments in derivative instruments will be consistent with the Fund's investment objective and the 1940 Act and will not be used to seek to achieve a multiple or inverse multiple of an index. Also, the Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser. The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the

NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information will be publicly available regarding the Fund and the Shares, thereby promoting market transparency. Moreover, the Intraday Indicative Value, available on the NASDAQ OMX Information LLC proprietary index data service, will be widely disseminated by one or more major market data vendors and broadly displayed at least every 15 seconds during the Regular Market Session. On each business day, before commencement of trading in Shares in the Regular Market Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information for the Shares will be available via Nasdaq proprietary quote and trade services, as well as in accordance with the Unlisted Trading Privileges and the CTA plans for the Shares. Pricing information for Mortgage-Related Instruments, OTC Real Estate Companies, Short-Term Debt Instruments, repurchase agreements, certificates of deposit, bank time deposits, OTC options on mortgage REITs, Real Estate Companies and mortgage TBA transactions, OTC interest rate swap agreements, and OTC options on interest rate swap agreements will be available from major broker-dealer firms and/or major market data vendors and/or Pricing Services. Pricing information for mortgage REITs (both common and preferred shares), exchange-traded Real Estate Companies, ETFs, exchange-traded options on mortgage REITs and Real Estate Companies, exchange-traded U.S. Treasury and Eurodollar futures contracts, exchange-traded interest rate swap agreements, exchange-traded options on U.S. Treasury and Eurodollar futures contracts, and exchange-traded options on interest rate swap agreements will be available from the applicable listing exchange and from major market data vendors. Money market funds are typically priced once each business day and their prices will be available through the applicable fund's Web site or from major market data vendors.

The Fund's Web site will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Trading in Shares of the Fund will be halted under the conditions specified in Nasdaq Rules 4120 and 4121 or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to Nasdaq Rule 5735(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

The Fund's investments will be valued daily. Investments traded on an exchange (*i.e.*, a regulated market), will generally be valued at market value prices that represent last sale or official closing prices. Non-exchange traded investments will generally be valued using prices obtained from a Pricing Service. If, however, valuations for any of the Fund's investments cannot be readily obtained as provided in the preceding manner, or the Pricing Committee questions the accuracy or reliability of valuations that are so obtained, such investments will be valued at fair value, as determined by the Pricing Committee, in accordance with the Valuation Procedures and in accordance with provisions of the 1940 Act.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and exchange-traded securities and instruments held by the Fund (including mortgage REITs (both common and preferred shares); exchange-traded Real Estate Companies; ETFs; exchange-traded options on mortgage REITs and Real Estate Companies; exchange-traded U.S. Treasury and Eurodollar futures contracts; exchange-traded interest rate swap agreements; exchange-traded options on U.S. Treasury and Eurodollar futures contracts; and exchange-traded options on interest rate swap agreements) with other markets and other entities that are members of ISG, and FINRA may obtain trading information regarding trading in the Shares and such exchange-traded securities and instruments held by the Fund from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and the exchange-traded securities and instruments held by the Fund from markets and other entities that are members of ISG, which includes securities and futures exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement. Moreover, FINRA, on behalf of the Exchange, will be able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's TRACE. Furthermore, as noted above, investors will have ready access to information regarding the Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

For the above reasons, Nasdaq believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change will facilitate the listing and trading of an additional type of actively-managed exchange-traded fund that will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will: (a) by order approve or disapprove such proposed rule change; or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2016–064 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2016–064. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2016–064 and should be submitted on or before June 2, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–11156 Filed 5–11–16; 8:45 am]

BILLING CODE 8011–01–P

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[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77780; File No. SR–BatsEDGX–2016–13]

Self-Regulatory Organizations; Bats EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees

May 6, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 29, 2016, Bats EDGX Exchange, Inc. (the "Exchange" or "EDGX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the fee schedule applicable to Members[5] and non-members of the Exchange pursuant to EDGX Rules 15.1(a) and (c).

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange determines the liquidity adding rebate that it will provide to Members using the Exchange's tiered pricing structure. Currently, the Exchange provides a $0.0027 per share rebate under footnote 2 of the Fee Schedule for a Member that adds an ADV[6] of at least 0.02% of the TCV[7] in Tape B securities for orders that yield fee codes B and 4.[8] The Exchange currently has only one Tape B Volume Tier.

The Exchange now proposes to amend the Tape B Volume Tier to add an additional Tape B Volume Tier to provide two Tape B Volume Tiers. The Exchange proposes that the current Tape B Volume Tier be renamed Tape B Volume Tier 1. The Exchange proposes that the rebate and the required criteria for Tape B Volume Tier 1 remain substantively the same as the current Tape B Volume Tier. The Exchange also proposes a second Tape B Volume Tier named "Tape B Volume Tier 2." The Exchange proposes to provide a rebate per share of $0.0030 pursuant to the Tier and proposes the required criteria to be that a Member adds an ADV of at least 0.15% of the TCV in Tape B securities. To accommodate this proposed change in its Fee Schedule, the Exchange proposes adding an additional row to the Tape B Volume Tier table to list the Tape B Volume Tier 2. The Exchange also proposes adding an additional column to separate Tape B Volume Tier 1 and Tape B Volume Tier 2. Finally, the Exchange proposes stating as a precursor that both Tape B Volume

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] The term "Member" is defined as "any registered broker or dealer that has been admitted to membership in the Exchange." *See* Exchange Rule 1.5(n).

[6] As defined on the Exchange's Fee Schedule.

[7] *Id.*

[8] *See* Securities Exchange Act Release No. 76816 (January 4, 2016, 81 FR 987 (January 8, 2016) (SR–EDGX–2015–67).

Tiers are applicable to orders yielding fee codes B and 4 and removing the same statement from the current text describing Tape B Volume Tier 1.

Implementation Date

The Exchange proposes to implement this amendment to its Fee Schedule effective May 2, 2016.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[9] in general, and furthers the objectives of Section 6(b)(4),[10] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange also notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule changes reflect a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. The Exchange believes that the proposed amendments to the Tape B Volume Tier are equitable and non-discriminatory in they would apply uniformly to all Members. The Exchange believes the rate remains competitive with those charged by other venues and, therefore, reasonable and equitably allocated to Members.

Volume-based rebates such as that proposed herein have been widely adopted by exchanges, including the Exchange, and are equitable because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to: (i) The value to an exchange's market quality; (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns; and (iii) introduction of higher volumes of orders into the price and volume discovery processes. The Exchange believes that the proposal is a reasonable, fair and equitable, and not unfairly discriminatory allocation of fees and rebates because it will provide Members with an additional incentive to reach certain thresholds on the Exchange.

In particular, the Exchange believes the addition of the proposed second, higher Tape B Volume Tier 2 is a reasonable means to encourage Members to increase the liquidity they provide on the Exchange. Further, Members will still be able to earn the currently offered rebate under Tape B Volume Tier 1. The addition of a second, higher tier merely incentivizes a Member to provide even greater liquidity. The Exchange further believes that the amendment to the Tape B Volume Tier represents an equitable allocation of reasonable dues, fees, and other charges because the thresholds necessary to achieve the tier continue to encourage Members to add displayed liquidity to the EDGX Book[11] each month. The increased liquidity benefits all investors by deepening EDGX's liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe its proposed amendment to its Fee Schedule would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed change represents a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Additionally, Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. The Exchange does not believe that the proposed additional tier would burden competition, but instead, enhances competition, as it is intended to increase the competitiveness of and draw additional volume to the Exchange. The Exchange does not believe the amended tier would burden intramarket competition as it would apply to all Members uniformly. Accordingly, the Exchange does not believe that the proposed change will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and paragraph (f) of Rule 19b–4 thereunder.[13] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BatsEDGX–2016–13 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR-BatsEDGX–2016–13. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BatsEDGX–2016–13, and should be submitted on or before June 2, 2016.

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[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(4).

[11] The EDGX Book is the System's electronic file of orders. *See* Exchange Rule 1.5(d).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–11155 Filed 5–11–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77782; File Nos. SR–NYSE–2016–14; SR–NYSEArca–2016–25; SR–NYSEMKT–2016–20]

Self-Regulatory Organizations; New York Stock Exchange LLC; NYSE Arca, Inc.; NYSE MKT LLC; Order Approving Proposed Rule Change Amending and Restating the Fifth Amended and Restated Bylaws of the Exchanges' Ultimate Parent Company, Intercontinental Exchange, Inc., To Implement Proxy Access

May 6, 2016.

I. Introduction

On March 2, 2016, each of the New York Stock Exchange LLC ("NYSE"), NYSE Arca, Inc. ("NYSE Arca") and NYSE MKT LLC ("NYSE MKT" and, together with NYSE and NYSE Arca, "Exchanges") filed with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend and restate the Fifth Amended and Restated Bylaws ("Bylaws") of the Exchanges' ultimate parent company, Intercontinental Exchange, Inc. ("ICE"),[3] to implement proxy access. The proposed rule changes were published for comment in the **Federal Register** on March 22, 2016.[4] No comment letters were received in response to the proposals. This order approves the proposed rule changes.

II. Description of the Proposed Rule Changes

The Exchanges propose to amend and restate the Bylaws to add a new Section 2.15 that would, subject to a number of requirements, permit stockholders to nominate director nominees for election to the Board of Directors of ICE ("Board") and require ICE to include such director nominations in its proxy materials for the next annual meeting of stockholders ("Proxy Materials"). The Exchanges further propose to amend certain advance notice provisions in Section 2.13 of the Bylaws to account for the implementation of proxy access in proposed Section 2.15.[5]

Proposed Section 2.15 of the Bylaws

Proposed Section 2.15 of the Bylaws would enable an individual stockholder, or a group of up to 20 stockholders, to nominate director nominees for the Board and have them included in the Proxy Materials, so long as such stockholder or stockholders have collectively owned at least three percent of ICE's outstanding shares of common stock continuously for at least three years.[6] No stockholder would be permitted to participate in more than one group, and any stockholder appearing as a member of more than one group would be counted as a member of the group with the largest ownership position.[7] Notwithstanding the foregoing, a stockholder whose nominee is elected to the Board at an annual meeting under proposed Section 2.15 would not be eligible to nominate another candidate for the next two annual meetings.[8]

In order to nominate a director nominee to be included in the Proxy Materials under proposed Section 2.15, a stockholder would need to submit a notice ("Nomination Notice") to the Secretary of ICE, no earlier than the close of business 150 calendar days, and no later than the close of business 120 calendar days, before the anniversary of the date that ICE mailed its Proxy Materials for the previous year's annual meeting.[9] In proposed Section 2.15, the Exchanges propose to set forth in the Bylaws the specific information that would be needed to be included in the Nomination Notice. The following information is required for the Nomination Notice:

- A Schedule 14N[10] (or any successor form) relating to the nomination, completed and filed with the Commission;[11]
- a written notice of the nomination[12] containing a statement in support of the nominee's election to the Board, if desired, as well as the following representations and warranties by each nominating stockholder:
    - That the nominating stockholder did not acquire, and is not holding, securities of ICE for the purpose or with the effect of influencing or changing control of ICE;
    - that the nominee's candidacy or, if elected, membership on the Board would not violate applicable state or federal law or the rules of the principal national securities exchange on which ICE's securities are traded;
    - that the nominee does not have any direct or indirect relationship with ICE that will cause the nominee to be deemed not independent under the Board's Independence Policy;[13]
    - that the nominee qualifies as independent under the rules of the principal national securities exchange on which ICE's common stock is traded and meets that exchange's audit

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[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ICE owns 100% of the equity interest in Intercontinental Exchange Holdings, Inc., which in turn owns 100% of the equity interest in NYSE Holdings LLC. NYSE Holdings LLC owns 100% of the equity interest of NYSE Group, Inc., which owns 100% of the equity interest of each of the Exchanges. ICE is a publicly traded company listed on the NYSE.

[4] *See* Securities Exchange Act Release Nos. 77384 (Mar. 17, 2016), 81 FR 15371 (Mar. 22, 2016) (SR–NYSE–2016–14); 77385 (Mar. 17, 2016), 81 FR 15378 (Mar. 22, 2016) (SR–NYSEArca–2016–25); and 77386 (Mar. 17, 2016), 81 FR 15366 (Mar. 22, 2016) (SR–NYSEMKT–2016–20) (collectively, "Notices").

[5] *See* Notices, *supra* note 4, for a more detailed description of the proposed amendments.

[6] Proposed Section 2.15(c)(i)–(iii). Shares may be counted as "owned" only where a stockholder possesses both the full voting and investment rights pertaining to the shares, as well as the full economic interest in such shares. *Id.* at 2.15(c)(iv).

[7] *Id.* at 2.15(c)(v).

[8] *Id.* at 2.15(c)(i).

[9] *Id.* at 2.15(d). If an annual meeting is not scheduled to be held within a period that commences 30 days before and ends 30 days after the anniversary date, the nominating stockholder would be required to submit the Nomination Notice by the later of the close of business 120 days prior to the date of such annual meeting or the tenth day following the first public disclosure of the annual meeting date. *Id.*

[10] 17 CFR 240.14n–101.

[11] Proposed Section 2.15(d)(i).

[12] *Id.* at 2.15(d)(ii). The written notice would need to include certain information that is required for the nomination of directors by Section 2.13(b) of the Bylaws and details regarding any relationship in the past three years that would have been described by Item 6(e) of Schedule 14N if that relationship had existed on the date of submission of the Schedule 14N. *Id.* at 2.15(d)(ii)(A) and (B). In the case of a nomination by a group, the notice would also need to include the designation by all group members of one group member authorized to act on behalf of all group members with respect to matters relating to the nomination, including withdrawal of the nomination. *Id.* at 2.15(d)(ii)(K).

[13] The Board's current Independence Policy can be found at: *http://ir.theice.com/~/media/Files/I/Ice-IR/documents/corporate-governance-documents/board-independence-policy.pdf.*

  - committee independence requirements;[14]
  - that the nominee is a "non-employee director" for the purposes of Rule 16b-3 under the Exchange Act,[15] is an "outside director" for purposes of Section 162(m) of the Internal Revenue Code,[16] and is not and has not been subject to any event specified in Rule 506(d)(1) of Regulation D under the Securities Act of 1933[17] or Item 401(f) of Regulation S–K under the Exchange Act;[18]
  - that the nominating stockholder satisfies the eligibility requirements set forth in proposed Section 2.15 of the Bylaws and intends to continue to satisfy such requirements through the date of the annual meeting; and
  - that the nominating stockholder will not engage in a "solicitation" within the meaning of Rule 14a–1(l) under the Exchange Act[19] in support of the election of any individual as a director at the applicable annual meeting, other than its nominee(s) or any nominee of the Board of Directors and will not use any proxy card other than ICE's proxy card in soliciting stockholders in connection with the election of its nominee.
- an executed agreement,[20] pursuant to which each nominating stockholder agrees:
  - To comply with all applicable laws, rules and regulations in connection with the nomination, solicitation, and election of a nominee;
  - to file any written solicitation or other communication with ICE stockholders relating to ICE directors, director nominees, or the nominating stockholder's nominee with the Commission;
  - to assume all liability stemming from an action, suit, or proceeding relating to any actual or alleged legal or regulatory violations arising out of any communication by the nominating stockholder or its nominee in connection with the nomination or election of directors, including the Nomination Notice;
  - to indemnify ICE and its directors, officers, and employees against any liability incurred in connection with any action, suit, or proceeding relating to a failure or alleged failure of the nominating stockholder or its nominees to comply with, or a breach or alleged breach of, its respective obligations, agreements, or representations under proposed Section 2.15; and
  - to promptly notify ICE and any other recipients of communications by the nominating stockholder in connection with the nomination or election of a director nominee if (1) any information included in such communications or in the Nomination Notice ceases to be true and accurate in all material respects or a material fact necessary to make a statement not misleading has been omitted or (2) the nominating stockholder has failed to continue to satisfy the eligibility requirements described in proposed Section 2.15(c); and
- an executed agreement,[21] by the nominee:
  - to provide to ICE such other information and certifications, including completion of ICE's director questionnaire, as it may reasonably request;
  - that the nominee has read and agrees, if elected, to serve as a member of the Board and to adhere to ICE's Corporate Governance Guidelines and Global Code of Business Conduct and any other policies and guidelines applicable to directors; and
  - that the nominee is not and will not become a party to any (i) undisclosed financial agreement or arrangement with any person or entity other than ICE in connection with his or her service or action as a director of ICE, (ii) undisclosed agreement or arrangement with any person or entity as to how the nominee would vote or act on any issue or question as a director of ICE; or (iii) voting commitment that could reasonably be expected to interfere with the nominee's ability to comply, if elected, with his or her fiduciary duties under applicable law.

If so requested in the relevant Nomination Notice, and subject to the requirements set forth in proposed Section 2.15,[22] ICE must include in its Proxy Materials information regarding a director nominee nominated for election pursuant to proposed Section 2.15, including: (1) The name of the nominee (which must also be included on ICE's form of proxy and ballot), (2) certain disclosures regarding the director nominee and each nominating stockholder that are required by the Commission or other applicable law to be included in the Proxy Materials, (3) a statement in support of the nominee's election to the Board included in the Nomination Notice, subject to compliance with Section 14 of the Exchange Act[23] and the rules thereunder, and (4) any other information that ICE or the Board determines,[24] in its discretion, to include in the Proxy Materials relating to the nomination of the nominee, including any statement in opposition to the nomination.[25]

Notwithstanding the foregoing, ICE may omit from the Proxy Materials, or may supplement or correct, any information, including all or any portion of the statement in support of the nominee included in the Nomination Notice, if the Board determines that: (1) Such information is not true in all material respects or omits a material statement necessary to make the statements made not misleading; (2) such information directly or indirectly impugns the character, integrity, or personal reputation of, or directly or indirectly makes charges concerning improper, illegal, or immoral conduct or associations, without factual foundation, with respect to, any person; or (3) the inclusion of such information in the Proxy Materials would otherwise violate the federal proxy rules or any other applicable law, rule or regulation.[26] ICE may solicit against, and include in the Proxy Materials its own statement relating to, any nominee.[27]

Under the proposal, there is a limit to the number of director nominees submitted pursuant to proposed Section 2.15 that may be included in the Proxy Materials. Specifically, ICE would not be required to include in the Proxy Materials more nominees submitted pursuant to proposed Section 2.15 than that number of directors constituting twenty percent of the total number of directors of the Board (rounded down to the nearest whole number, but not less than two).[28] This maximum number of permitted nominees would be further reduced by (1) the number of nominees that are subsequently withdrawn after nomination or that the Board itself decides to nominate for election and (2) the number of incumbent directors, if any, who were nominated pursuant to proposed Section 2.15 at the preceding annual meeting and whose re-election is recommended by the Board.[29] Thus, the maximum number of nominees permitted pursuant to proposed Section 2.15 in any given year could be fewer than two.[30] Where the number of nominees submitted pursuant to proposed Section 2.15 exceeds the maximum number permitted, each nominating stockholder—in order of ownership position, largest to smallest—would select a director nominee until the maximum number of nominees is reached.[31]

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[14] The NYSE is the principal market for ICE's common stock. Its independent director standards are set forth in NYSE's Listed Company Manual in Sections 303A.00, 303A.01 and 303A.02, and its audit committee independence requirements are set forth in NYSE's Listed Company Manual under Sections 303A.06 and 303A.07.

[15] 17 CFR 240.16b–3.

[16] 26 U.S.C. 162(m).

[17] 17 CFR 230.506(d)(1) (identifying "bad actors" who will be disqualified from a safe harbor related to the private offering exemption of Section 4(a)(2) of the Securities Act).

[18] 17 CFR 229.401(f) (requiring director nominees to disclose participation in certain legal proceedings).

[19] 17 CFR 240.14a–1(*l*).

[20] Proposed Section 2.15(d)(iii).

[21] *Id.* at 2.15(d)(iv).

[22] The chairman of any annual meeting of stockholders shall have the power and duty to determine whether a nominee has been nominated in accordance with the requirements of proposed Section 2.15 and, if not so nominated, shall direct and declare at the annual meeting that such Nominee shall not be considered. *Id.* at 2.15(a).

[23] 15 U.S.C. 78n.

[24] For the purposes of proposed Section 2.15, any determination to be made by the Board may be made by the Board, a committee of the Board, or any officer of ICE designated by the Board or a committee of the Board, and such determination will be final and binding on ICE and any other person so long as made in good faith. Proposed Section 2.15(a).

[25] *Id.*

[26] *Id.* at 2.15(e)(ii)

[27] *Id.*

Proposed Section 2.15 would allow the Board to disregard director nominations submitted pursuant to proposed Section 2.15 in certain circumstances. If the Board determines that a nominee or nominating stockholder no longer satisfies the eligibility requirements, a nominating stockholder withdraws its nomination, or a nominee is unwilling or unable to serve as a director, the Board may disregard the nomination and ICE would not be required to include the nominee in the Proxy Materials and could affirmatively inform stockholders that the nominee would not be voted on at the annual meeting.[32]

In addition, the proposal permits ICE to omit nominees submitted pursuant to proposed Section 2.15 from the Proxy Materials (and to prohibit any vote on such nominee) in the following situations:

- The nominating stockholder(s) (or representatives thereof) fail to present the nomination at the annual meeting or withdraw the nomination;
- the Board determines that the nomination or election of the nominee would result in ICE violating or failing to be in compliance with its certificate of incorporation, the Bylaws, or any applicable law, rule or regulation to which it is subject, including any rule or regulation of the principal national securities exchange on which ICE's securities are traded;
- the nominee was nominated for election to the Board pursuant to Section 2.15 at one of ICE's two preceding annual meetings of stockholders and withdrew, became ineligible, or failed to receive 20% of the vote;
- the nominee has been, within the past three years an officer or director of a competitor or is a U.S. Disqualified Person as defined in ICE's certificate of incorporation;
- ICE is notified, or the Board determines, that: (i) A nominating stockholder has failed to continue to satisfy the eligibility requirements of proposed Section 2.15; (ii) any of the representations and warranties made in the Nomination Notice cease to be true and accurate in all material respects (or omit a material fact necessary to make the statements made not misleading); (iii) the nominee becomes unwilling or unable to serve on the Board, or (iv) the nominee or nominating stockholder materially violate or breach the obligations, agreements, representations, or warranties made under proposed Section 2.15; or
- ICE receives a notice under Section 2.13 that a stockholder intends to nominate a candidate for director at the annual meeting.[33]

Amendments to Section 2.13 of the Bylaws

Currently, Section 2.13 of the Bylaws sets forth a process by which ICE stockholders may nominate directors at their annual and special meetings, including certain advance notice requirements.[34] The Exchanges propose to amend the advance notice provisions in Section 2.13 to address the application of those provisions to stockholder nominations submitted under the proxy access provision in proposed Section 2.15. The proposed amendments would require director nominations submitted by stockholders pursuant to proposed Section 2.15 to be specified in the notice of annual meeting given by the Board, but they would exempt such nominations from other timing and notice requirements set forth in Section 2.13.[35]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule changes are consistent with the requirements of Section 6 of the Act[36] and the rules and regulations thereunder applicable to a national securities exchange.[37] In particular, the Commission finds that the proposed rule changes are consistent with the requirements of Section 6(b)(5) of the Act, which requires, among other things, that an exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[38]

A shareholder who wishes to nominate his or her own candidate for director may initiate a proxy contest in order to solicit proxies from fellow shareholders, but doing so requires the preparation and dissemination of separate proxy materials and entails substantial cost. Proposed Section 2.15 of the Bylaws provides ICE shareholders an alternative path for having their nominees considered through the proxy process. This proposed rule change is intended to respond to a request made by ICE shareholders regarding proxy access.[39]

The Exchanges state that the proposal, by providing a process for certain stockholders to nominate directors to be included in the Proxy Materials,[40] should help to strengthen the corporate governance of ICE and foster accountability to ICE's stockholders, thereby protecting investors and the public interest.[41] The Commission believes that the proposal to provide a process for shareholder proxy access in the Bylaws of ICE, the ultimate parent company of the Exchanges, should help to provide the stockholders of ICE that meet the stated requirements of proposed Section 2.15 with an alternative opportunity to exercise their right to nominate directors for the Board, consistent with the Exchange Act.

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[28] *Id.* at 2.15(b)(i).

[29] *Id.*

[30] *See* Notices, *supra* note 4, at 81 FR 15372, 15379, and 15367, respectively.

[31] Proposed Section 2.15(b)(ii).

[32] *Id.* at 2.15(b)(ii). *See also infra* note 33 and accompanying text (permitting the Board to omit stockholder nominees from the Proxy Materials in the same circumstances).

[33] *Id.* at 2.15(e)(i).

[34] *See* Bylaws, Section 2.13.

[35] Proposed Section 2.13(b). The Exchanges have also proposed to amend Section 2.13(d) to clarify that the definition of "publicly announced or disclosed" set forth in that provision shall apply to Section 2.15. Proposed Section 2.13(d).

[36] 15 U.S.C. 78f(b).

[37] In approving these proposed rule changes, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[38] 15 U.S.C. 78f(b)(5).

[39] In November 2015, the Comptroller of the City of New York, on behalf of certain city retirement systems that are stockholders of ICE, requested that ICE include a proxy access proposal in its 2016 proxy statement. After discussions with the Comptroller's office, ICE management determined to recommend the proposed rule changes to the Board and, on that basis, the Comptroller's request was withdrawn. *See* Notices, *supra* note 4, at 81 FR 15374, 15382, and 15370, respectively.

[40] As discussed above, however, the number of permitted director nominees under Section 2.15 may constitute less than twenty percent of the number of directors currently serving on the Board under certain circumstances and could be less than two nominees. *See supra* notes 28–30 and accompanying text; Proposed Section 2.15(b)(i).

[41] *See* Notices, *supra* note 4, at 81 FR 15371, 15378, and 15367, respectively.

The proposed rule changes will require ICE to include in its Proxy Materials information regarding a director nominee nominated pursuant to proposed Section 2.15 in its Proxy Materials, including disclosures regarding the nominee and nominating stockholder(s), any statement in support of the nominee provided by the nominating stockholder(s), and any other information that ICE or the Board determines to include relating to the nomination. The Commission believes that the provision of such information could help stockholders to assess whether a nominee submitted pursuant to proposed Section 2.15 possesses the necessary qualifications and experience to serve as a director.

The proposed rule changes limit the availability of proxy access in certain circumstances. For example, in order to be eligible to submit a nomination to be included in the Proxy Materials pursuant to proposed Section 2.15, a shareholder (or group of shareholders) is required to own at least three percent of ICE's outstanding shares of common stock continuously for at least three years. Furthermore, a shareholder may not nominate a director to be included in the Proxy Materials pursuant to proposed Section 2.15 if he or she is holding ICE's securities with the intent of effecting a change of control of ICE. The proposed rule changes also generally would limit the number of director nominees submitted pursuant to proposed Section 2.15 that may be included in the Proxy Materials to twenty percent of the total number of directors of the Board. The proposed rule changes would allow ICE to disregard or omit nominees submitted pursuant to proposed Section 2.15 from the Proxy Materials in certain circumstances, including if the Board determines that the nomination or election of the nominee would result in ICE violating or failing to be in compliance with its governing documents or any applicable law, rule or regulation to which it is subject.[42] The Commission notes that such limitations on proxy access seem designed to balance the ability of ICE shareholders to participate more fully in the nomination and election process against the potential cost and practical difficulties of requiring inclusion of shareholder nominations in proxy materials.

The Commission notes that the proposed proxy access provisions include safeguards to help verify that any director nominees submitted pursuant to proposed Section 2.15 would qualify as independent directors and that the nominating shareholder's nomination of the nominee, and the nominee's membership on the Board, if elected, would not violate any applicable laws, rules or regulations of any government entity or relevant self-regulatory organization. Specifically, the nominating stockholder must represent and warrant, among other things, that: (i) The nominee's candidacy or, if elected, membership on the Board would not violate applicable state or federal law or the rules of the principal national securities exchange on which ICE's securities are traded; (ii) the nominee does not have any direct or indirect relationship with ICE that will cause the nominee to be deemed not independent under the Board's Independence Policy;[43] and (iii) the nominee qualifies as independent under the rules of the principal national securities exchange on which ICE's common stock is traded and meets that exchange's audit committee independence requirements.[44] In addition, each nominating stockholder is required to provide an executed agreement, pursuant to which he or she agrees to comply with all applicable laws, rules and regulations in connection with the nomination, solicitation, and election of a nominee. The nominee is also required to provide an executed agreement, pursuant to which: (i) If elected, the nominee agrees to adhere to ICE's Corporate Governance Guidelines and Global Code of Business Conduct and any other policies and guidelines applicable to directors; and (ii) the nominee agrees that he or she is not and will not become party to certain financial or voting arrangements that may present conflicts of interest or interfere with the nominee's ability to comply, if elected, with his or her fiduciary duties under applicable law.[45]

The Commission notes that the safeguards and limitations described above should help to ensure ICE can comply with its bylaws and any applicable laws, rules, regulations, including, among others, the Board's Independence Policy and exchange listing standards on independent directors and audit committees, consistent with Section 6(b)(5) of the Act. Based on the foregoing, the Commission finds that the proposed rule changes filed by the Exchanges are consistent with the Act.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[46] that the proposed rule changes (SR–NYSE–2016–14, SR–NYSEArca–2016–25, SR–NYSEMKT–20), be, and hereby are, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[47]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–11178 Filed 5–11–16; 8:45 am]

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[42] *See, e.g.,* Proposed Section 2.15(e)(i)(C).

[43] *See also id.* (permitting ICE to omit from its Proxy Materials any nominee submitted pursuant to proposed Section 2.15 if the Board determines that nomination or election of that nominee to the Board would cause ICE to violate or fail to be in compliance with its Bylaws, its certificate of incorporation, or any applicable law, rule or regulation, including any rules or regulations of the principal national securities exchange on which ICE's common stock is traded).

[44] *See supra* notes 12–19 and accompanying text.

[45] *See supra* notes 20–21 and accompanying text.

[46] 15 U.S.C. 78s(b)(2).

[47] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77777; File No. SR–MIAX–2016–09]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

May 6, 2016.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 26, 2016, Miami International Securities Exchange LLC ("MIAX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Options Fee Schedule (the "Fee Schedule").

The text of the proposed rule change is available on the Exchange's Web site at *http://www.miaxoptions.com/filter/wotitle/rule_filing,* at MIAX's principal office, and at the Commission's Public Reference Room.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule to: (i) Offer to each Qualifying Member (as defined below) a rebate of $0.03 per contract executed within Tier 1 of the Priority Customer Rebate Program (the "PCRP"),[3] and (ii) amend the definition of "Baseline Percentage" under the Professional Rebate Program. The Exchange is also proposing a technical clarifying amendment to the Fee Schedule, as described below.

The Exchange proposes to amend Section (1)(a)(iii) of the Fee Schedule to offer a $0.03 rebate per contract executed within Tier 1 of the PCRP to each "Qualifying Member," as defined below. Tier 1 of the PRCP [sic] currently offers no per contract credits to Members that execute a number of Priority Customer[4] contracts as a percentage of national customer volume in multiply-listed options classes (with certain exclusions detailed in the Fee schedule)[5] listed on MIAX of 0.00% to 0.50% in a given month, unless the Priority Customer contracts executed in Tier 1 are the result of a PRIME[6] Agency Order, which receive a rebate of $0.10 per contract.

In order to provide incentive for order flow providers to increase the volume of Professional[7] orders they submit to the Exchange, and to send additional Priority Customer order flow as well, the Exchange proposes to offer the $0.03 per contract credit for Priority Customer contracts executed in Tier 1 of the PRCP [sic] program to Members that achieve certain volume increases in the Professional Rebate Program. Specifically, the Exchange proposes to provide a rebate of $0.03 per Priority Customer contract executed in Tier 1 of the PRCP [sic] in a given month to Members that execute a certain number of contracts in that month for the account(s) of a Professional and which qualify for the Professional Rebate Program described in Section (1)(a)(iv) of the Fee Schedule.

In order to qualify for the proposed monthly PRCP [sic] Tier 1 rebate, a Member must execute an increased percentage of contracts on MIAX in that same month for the account(s) of a Professional (not including mini-options, Non-Priority Customer-to-Non-Priority Customer Orders, QCC Orders, PRIME Orders, PRIME AOC Responses, PRIME Contra-side Orders, and executions related to contracts that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in MIAX Rule 1400 (collectively, for purposes of the Professional Rebate Program, "Excluded Contracts")) by greater than 0.065% of the number of contracts executed by the Member for the account(s) of a Professional during the fourth quarter of 2015 as a percentage of the total volume reported by the Options Clearing Corporation ("OCC") in MIAX classes during the fourth quarter of 2015 (the "Baseline Percentage"). For the purpose of establishing a Baseline Percentage for any Member for whom no fourth quarter 2015 Baseline Percentage exists, MIAX will use 0.03% as that Member's Baseline Percentage, as described below.

A Member that qualifies to receive the proposed PRCP [sic] Tier 1 rebate will be known as a "Qualifying Member," which is a Member or its affiliates of at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A, that qualifies for the Professional Rebate Program and achieves a volume increase in excess of 0.065% over the applicable Baseline Percentage for Professional orders transmitted by that Member which are executed electronically on the Exchange in all multiply-listed option classes for the account(s) of a Professional and which qualify for the Professional Rebate Program during a particular month, relative to the appropriate Baseline Percentage (described below). The Exchange will aggregate the contracts resulting from orders of a Qualifying Member transmitted and executed electronically on the Exchange from affiliated Members of the Qualifying Member, provided there is at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A.

The Exchange also proposes to establish a new "Baseline Percentage" for Members who did not execute contracts for the account(s) of a Professional during the fourth quarter of 2015 in order to permit such Members to benefit from all of the rebates offered under the Professional Rebate Program. Currently, the Professional Rebate Program affords a per contract credit based upon the increase in the total volume submitted by a Member and executed for the account(s) of a Professional on MIAX (not including Excluded Contracts) during a particular month as a percentage of the total volume reported by (OCC) in MIAX classes during the same month (the "Current Percentage"), less the total volume submitted by that Member and executed for the account(s) of a Professional on MIAX (not including Excluded Contracts) during the fourth quarter of 2015 as a percentage of the total volume reported by OCC in MIAX classes during the fourth quarter of 2015 (the "Baseline Percentage"). The Exchange proposes to define a Baseline Percentage for Members who did not execute contracts for the account(s) of a Professional during the fourth quarter of 2015. For such Members (with respect to all available rebates in the Professional Rebate Program), the "Baseline Percentage" will be .03%.

The purpose of the proposed rule change is to encourage Members to direct an increased level of Professional contract volume to the Exchange by offering to provide such Members with an additional, concurrent incentive to direct Priority Customer order flow to the Exchange. The Exchange believes that increased Professional and Priority Customer volume will attract more liquidity to the Exchange, which benefits all market participants. Increased Professional and Priority Customer order flow should attract professional liquidity providers (Market Makers), which in turn should make the MIAX marketplace an attractive venue where Market Makers will submit narrow quotations with greater size, deepening and enhancing the quality of the MIAX marketplace. This should provide more trading opportunities and tighter spreads for other market participants and result in a corresponding increase in order flow from such other market participants.

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[3] Under the PRCP [sic], MIAX credits each Member the per contract amount resulting from each Priority Customer order transmitted by that Member which is executed electronically on the Exchange in all multiply-listed option classes (excluding QCC Orders, mini-options, Priority Customer-to-Priority Customer Orders, PRIME AOC Responses, PRIME Contra-side Orders, PRIME Orders for which both the Agency and Contra-side Order are Priority Customers, and executions related to contracts that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in MIAX Rule 1400), provided the Member meets certain percentage thresholds in a month as described in the Priority Customer Rebate Program table. *See* Fee Schedule, Section (1)(a)(iii).

[4] The term "Priority Customer" means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

[5] *See supra* note 3.

[6] The MIAX Price Improvement Mechanism ("PRIME") is a price improvement auction under which the Initiating Member electronically submits an order that it represents as agent (an "Agency Order") into a PRIME Auction ("Auction"), which the Initiating Member is willing to match as principal, the price and size of responses in the Auction at a single price or up to an optional designated limit price. *See* Exchange Rule 515A.

[7] A "Professional" is a (i) Public Customer that is not a Priority Customer; (ii) Non-MIAX Market Maker; (iii) Non-Member Broker-Dealer; or (iv) Firm. *See* Fee Schedule, Section (1)(a)(iv).

The Exchange is also proposing a minor technical amendment to Section (1)(a)(iii) of the Fee Schedule to refer specifically to "The Priority Customer rebate" payment instead of stating "This" payment in the third paragraph under the PRCP [sic] table. This is intended for clarity and ease of reference.

The credits paid out as part of the PCRP will be drawn from the general revenues of the Exchange.[8] The Exchange calculates volume thresholds on a monthly basis. The proposed rule changes are to take effect May 1, 2016.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[9] in general, and furthers the objectives of Section 6(b)(4) of the Act[10] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members, and issuers and other persons using its facilities.

The Exchange believes that the proposal to offer the rebate under the PCRP to Qualifying Members is fair, equitable and not unreasonably discriminatory, because it applies equally to all Qualifying Members. The proposed per contract rebate for Priority Customer orders is reasonably designed because it will encourage providers of Professional order flow to send increased Professional order flow to the Exchange in order to receive the per contract credit for achieving Tier 1 volume in contracts executed for Priority Customers. The Exchange thus believes that the proposed new rebate should improve market quality for all market participants by providing more execution opportunities. All Qualifying Members will receive the same rebate for Priority Customer contracts executed in PRCP [sic] Tier 1.

The Exchange believes that the proposal to amend the definition of Baseline Percentage is fair, equitable and not unreasonably discriminatory. The Exchange believes that the proposed definition of Baseline Percentage should provide an equal opportunity, and a beginning measuring percentage, for all Members that did not have a Baseline Percentage for the fourth quarter of 2015 to submit Professional order flow and thus become Qualifying Members for the Tier 1 Priority Customer contract rebate. This should in turn increase order flow, trading opportunities and improve the overall depth, liquidity and quality of the market for all MIAX participants.

Additionally, the proposed amended definition of Baseline Percentage is equitable and not unfairly discriminatory because it will benefit Members who did not execute orders for the account(s) of a Professional in the fourth quarter of 2015 and such Members will now be on an equal playing field with respect to the calculation of their potential increase in percentage of Professional contracts executed for purposes of becoming a Qualifying Member.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed changes would increase both intermarket and intramarket competition by encouraging Members to direct their Professional and Priority Customer orders to the Exchange, which should enhance the quality of quoting and increase the volume of contracts traded on MIAX. The Exchange believes that the changes to each of the PCRP and the Professional Rebate Program should provide additional liquidity that enhances the quality of its markets and increases the number of trading opportunities on MIAX for all participants, who will be able to compete for such opportunities. This should benefit all market participants and improve competition on the Exchange.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and to attract order flow to the Exchange. The Exchange believes that the proposed rule change reflects this competitive environment because it adds new rebates and thus encourages market participants to direct both their Professional and Priority Customer order flow to the Exchange. Given the robust competition for volume among options markets, many of which offer the same products, enhancing the existing volume-based PCRP and Professional Rebate Programs to attract order flow is consistent with the goals of the Act. The Exchange believes that the proposal will enhance competition, because market participants will have another additional pricing consideration in determining where to execute orders and post liquidity if they factor the benefits of the proposed amendments to the PCRP and Professional Rebate Program into the determination.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[11] and Rule 19b–4(f)(2)[12] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

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[8] Despite providing credits under the PCRP and the Professional Rebate Program, the Exchange represents that it will continue to have adequate resources to fund its regulatory program and fulfill its responsibilities as a self-regulatory organization while each of the PCRP and the Professional Rebate Program is in effect.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 240.19b–4(f)(2).

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–MIAX–2016–09 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2016–09. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2016–09, and should be submitted on or before June 2, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–11152 Filed 5–11–16; 8:45 am]

BILLING CODE 8011–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA 2015–0060]

Privacy Act of 1974, as Amended; Computer Matching Program (SSA/Department of the Treasury, the Bureau of the Fiscal Service (Fiscal Service)—Match Number 1038

AGENCY: Social Security Administration (SSA).

ACTION: Notice of a renewal of an existing computer matching program that will expire on June 25, 2016.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a renewal of an existing computer matching program that we are currently conducting with Fiscal Service.

DATES: We will file a report of the subject matching program with the Committee on Homeland Security and Governmental Affairs of the Senate; the Committee on Oversight and Government Reform of the House of Representatives; and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either telefaxing to (410) 966–0869 or writing to the Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, 617 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the conditions under which computer matching involving the Federal government could be performed and adding certain protections for persons applying for, and receiving, Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such persons.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain approval of the matching agreement by the Data Integrity Boards of the participating Federal agencies;

(3) Publish notice of the computer matching program in the **Federal Register**;

(4) Furnish detailed reports about matching programs to Congress and OMB;

(5) Notify applicants and beneficiaries that their records are subject to matching; and

(6) Verify match findings before reducing, suspending, terminating, or denying a person's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of our computer matching programs comply with the requirements of the Privacy Act, as amended.

Glenn Sklar,

Acting Executive Director, Office of Privacy and Disclosure, Office of the General Counsel.

Notice of Computer Matching Program, SSA With the Department of the Treasury, the Bureau of the Fiscal Service (Fiscal Service)

A. Participating Agencies

SSA and Fiscal Service.

B. Purpose of the Matching Program

The purpose of this matching program sets forth the terms, conditions, safeguards, and procedures under which Fiscal Service will disclose savings security data to us. We will use the data to determine continued eligibility for Supplemental Security Income (SSI) applicants and recipients, or the correct benefit amount for recipients and deemors who did not report or incorrectly reported ownership of savings securities.

C. Authority for Conducting the Matching Program

The legal authority for this matching program is executed under the Privacy Act of 1974, 5 United States Code (U.S.C.) 552a, as amended by the Computer Matching and Privacy Protection Act of 1988, as amended, and the regulations and guidance promulgated thereunder.

The legal authority for us to conduct this matching program is contained in 1631(e)(1)(B), and 1631(f) of the Social Security Act (Act), (42 U.S.C. 1383(e)(1)(B), and 1383(f)).

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[13] 17 CFR 200.30–3(a)(12).

D. Categories of Records and Persons Covered by the Matching Program

The relevant SSA system of records (SOR) is "Supplemental Security Income Record and Special Veterans Benefits, Social Security Administration, Office of Systems, Office of Disability and Supplemental Security Income Systems," 60–0103, fully published on January 11, 2006 at 71 FR 1830 and updated on December 10, 2007 at 72 FR 69723. The relevant Fiscal Service SORs are Treasury/BPD.002, United States Savings Type Securities, and Treasury/BPD.008, Retail Treasury Securities Access Application. These SORs were last published on August 17, 2011 at 76 FR 51128.

The finder file we provide to Fiscal Service will contain approximately 10 million records of individuals for whom we request data for the administration of the SSI program. Fiscal Service will use files that contain approximately 185 million Social Security numbers (SSNs), with registration indexes, to match our records. Fiscal Service will provide a response record providing match results to us, which will contain approximately 1.8 million records.

Exchanges for this computer matching program will occur twice a year, in approximately February and August. We will furnish Fiscal Service with the SSN and name for each individual when requesting savings-securities registration information. When a match occurs on an SSN, Fiscal Service will disclose the following to us from Treasury/BPD.002:

a. The denomination of the security;
b. The serial number;
c. The series;
d. The issue date of the security;
e. The current redemption value; and
f. The return date of the finder file.

We will furnish Fiscal Service with the SSN and name for each individual when requesting savings-securities registration information. The finder file will contain the SSN associated with the account and report account holdings. When a match occurs on an SSN, Fiscal Service will disclose the following to us from Treasury/BPD.008:

a. The purchase amount;
b. The account number and confirmation number;
c. The series;
d. The issue date of the security;
e. The current redemption value; and
f. The return date of the finder file.

E. Inclusive Dates of the Matching Program

The effective date of this matching

lapsed: 30 days after publication of this notice in the **Federal Register** and 40 days after notice of the matching program is sent to Congress and OMB. The matching program will continue for 18 months from the effective date and, if both agencies meet certain conditions, it may extend for an additional 12 months thereafter.

[FR Doc. 2016–11175 Filed 5–11–16; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 9556]

Notice of Availability of the Draft Environmental Impact Report/Environmental Impact Statement for the Otay Mesa Conveyance and Disinfection System Project, San Diego County, California, Presidential Permit Application Review

AGENCY: Department of State.

ACTION: Notice of Availability, solicitation of comments.

SUMMARY: The U.S. Department of State (Department) announces availability for public review and comment of *the Draft Environmental Impact Report/Environmental Impact Statement for the Otay Mesa Conveyance and Disinfection System Project, San Diego County, California Presidential Permit Application Review* (Draft EIR/EIS). This document analyzes the potential environmental effects of issuing a Presidential Permit to the Otay Water District (District) for the construction, connection, operation, and maintenance of transboundary pipeline facilities for the importation of desalinated seawater from Mexico to the United States in San Diego County, California (Otay Water Pipeline). The Draft EIS/EIR was prepared consistent with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. Sec. 4321, *et seq.*), the regulations of the Council on Environmental Quality (CEQ) (40 CFR 1500–1508), and the Department's implementing regulations (22 CFR part 161), and pursuant to the California Environmental Quality Act (CEQA) of 1970. It evaluates the potential environmental impacts of issuing a Presidential Permit to the District to construct, connect, operate, and maintain an approximately four-mile-long, 48- to 54-inch-diameter potable water pipeline, and a metering station as well as a possible pump station and disinfection facility within the Otay Mesa area of the County of San Diego,

DATES: The Department invites the public, governmental agencies, tribal governments, and all other interested parties to provide comments on the Draft EIS/EIR during the 45-day public comment period. The public comment period starts on May 12, 2016, with the publication of this **Federal Register** Notice and will end June 27, 2016.

All comments received during the review period may be made public, no matter how initially submitted. Comments are not private and will not be edited to remove identifying or contact information. Commenters are cautioned against including any information that they would not want publicly disclosed. Any party soliciting or aggregating comments from other persons is further requested to direct those persons not to include any identifying or contact information, or information they would not want publicly disclosed, in their comments.

ADDRESSES: Comments on the Draft EIS/EIR may be submitted at *www.regulations.gov* by entering the title of this Notice into the search field and following the prompts. Comments may also be submitted by mail, addressed to: Otay Water Pipeline Project Manager, Office of Environmental Quality and Transboundary Issues (OES/EQT): Suite 2726, U.S. Department of State, 2201 C Street NW., Washington, DC 20520. All comments from agencies or organizations should indicate a contact person for the agency or organization.

FOR FURTHER INFORMATION CONTACT: Project details for the Otay Water Pipeline project and a copy of the Presidential Permit application, as well as information on the Presidential Permit process are available on the following Web sites: *http://www.state.gov/p/wha/rt/permit/app/otaypermit/index.htm* and *http://www.owd-desalconveyance.com/*. Please refer to these Web sites or contact the Department at the address listed in the **ADDRESSES** section of this notice.

SUPPLEMENTARY INFORMATION: Executive Order 11423, as amended, delegates to the Secretary of State the President's authority to receive applications for permits for the construction, connection, operation, or maintenance of certain facilities at the borders of the United States, and to issue or deny such Presidential Permits upon a national interest determination. To make this determination, the Department considers many factors, including foreign policy; environmental, cultural

In November 2013, the District submitted an application to the Department for a Presidential Permit authorizing the construction, connection, operation, and maintenance of a cross-border water pipeline facility for the proposed project, which would convey desalinated seawater from Mexico to the District's Roll Reservoir in San Diego County, which is approximately four miles northeast of the border.

The proposed Mexican desalination plant (not a part of the proposed project) is envisioned to produce 100 million gallons per day (MGD) of desalinated sea water. The District intends to initially purchase approximately 20–25 MGD of desalinated sea water, and ultimately increase the amount to 50 MGD. Due to seasonal variation in demand, the District anticipates that 10 MGD would be conveyed in the winter months, and up to 50 MGD would be conveyed during peak demand periods in the summer months. Numerous alignment routes for the pipeline were considered; however, after initial consideration of environmental and engineering opportunities and constraints, the District, together with the Department, determined three alternative alignments, and addressed those alignments in the Draft EIR/EIS. The District's preferred alternative is approximately 21,810 linear feet and extends from the border in a northwesterly direction within established right-of-ways and terminates on the east side of the Roll Reservoir.

The District will be responsible for approving the expenditure of public funds for the proposed project and the Department will be responsible for determining whether the proposed project serves the national interest pursuant to Executive Order 11423, and if so, issuing a Presidential Permit authorizing the construction, connection, operation, and maintenance of the cross-border pipeline facility.

Availability of the Draft EIS/EIR: Copies of the Draft EIS/EIR have been distributed to state and governmental agencies, tribal governments, and other interested parties. Printed copies of the document may be obtained by visiting the Otay Mesa-Nestor Library in San Diego, California or by contacting the Otay Project Manager at the above address. The Draft EIS/EIR is available on these project Web sites at *http://www.state.gov/p/wha/rt/permit/app/otaypermit/index.htm* and *http://www.owd-desalconveyance.com/.*

Deborah Klepp,

Director, Office of Environmental Quality and Transboundary Issues, Department of State.

[FR Doc. 2016–11282 Filed 5–11–16; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Delegation of Authority No. 394]

Designation of the Department of State Representative to the Administrative Conference of the United States

By virtue of the authority vested in the Secretary of State, including Section 1 of the State Department Basic Authorities Act, as amended (22 U.S.C. 2651a), and 5 U.S.C. 593, and delegated pursuant to Delegation of Authority 198, dated September 16, 1992, and to the extent authorized by law, I hereby designate the Department of State Legal Adviser as the Department of State government representative to the Administrative Conference of the United States.

This delegation of authority may be re-delegated, to the extent authorized by law.

Notwithstanding this delegation of authority, the Secretary, the Deputy Secretary, the Deputy Secretary for Management and Resources, and the Under Secretary for Management may exercise any function or authority delegated by this delegation of authority.

This Delegation of Authority will be published in the **Federal Register**.

Dated: April 29, 2016.

Patrick F. Kennedy,

Under Secretary of State for Management, Department of State.

[FR Doc. 2016–11274 Filed 5–11–16; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Delegation of Authority No. 236–7]

Re-Delegation by the Assistant Secretary of State for Educational and Cultural Affairs to the Deputy Assistant Secretary for Policy and Evaluation of Authority Under Section 102 of the Mutual Educational and Cultural Exchange Act of 1961, as Amended

By virtue of the authority vested in me as the Assistant Secretary of State for Educational and Cultural Affairs, including by Delegation of Authority No. 236–3, dated August 28, 2000, and Section 2(e)(2) of Delegation of 2011, and to the extent permitted by law, I hereby re-delegate to the Deputy Assistant Secretary for Policy and Evaluation, Bureau of Educational and Cultural Affairs, the functions in section 102 of the Mutual Educational and Cultural Exchange Act of 1961, as amended (22 U.S.C. 2452) relating to the provision by grant, contract or otherwise for a wide variety of educational and cultural exchanges.

This Delegation of Authority does not supersede or otherwise affect any other delegation of authority currently in effect. The functions and authorities re-delegated herein may not be further delegated without my approval.

Any reference in this Delegation of Authority to any statute or delegation of authority shall be deemed to be a reference to such statute or delegation of authority as amended from time to time.

This Delegation of Authority shall be published in the **Federal Register**.

Dated: March 31, 2016.

Evan Ryan,

Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 2016–11279 Filed 5–11–16; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Delegation of Authority No. 395]

Delegation of Authority Under 5 U.S.C. 5376 to the Inspector General for the U.S. Department of State

By virtue of the authority vested in me as Secretary of State, including Section 1 of the Department of State Basic Authorities Act, as amended (22 U.S.C. 2651a), I hereby delegate to the Inspector General for the U.S. Department of State, to the extent authorized by law, the authority under 5 U.S.C. 5376 to determine and adjust pay for Senior Professional positions.

This delegation of authority is not intended to revoke, amend, or otherwise affect the validity of any other delegation of authority.

Any act, executive order, regulation, or procedure subject to, or affected by, this delegation shall be deemed to be such act, executive order, regulation, or procedure as amended from time to time.

Notwithstanding this delegation of authority, the Secretary may at any time exercise any authority or function delegated by this delegation of authority.

This delegation of authority shall be

Dated: April 18, 2016.

John F. Kerry,

Secretary of State.

[FR Doc. 2016–11281 Filed 5–11–16; 8:45 am]

BILLING CODE 4710–42–P

SURFACE TRANSPORTATION BOARD

[Docket No. AB 290 (Sub-No. 381X)]

Norfolk Southern Railway Company—Abandonment Exemption—In Hamilton County, Ohio

On April 22, 2016, Norfolk Southern Railway Company (NSR) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the prior approval requirements of 49 U.S.C. 10903 to abandon approximately 4.10 miles of rail line extending from milepost CT 3.7 to milepost CT 7.8 in Hamilton County, Ohio (the Line). The Line traverses U.S. Postal Zip Codes 45207, 45212, 45208, 45209, 45226, and 45227.

According to NSR, no traffic has moved over the Line in more than five years. NSR further states that there is no potential for new traffic. NSR seeks to abandon the Line and sell the property to the City of Cincinnati (City) for a public redevelopment project. NSR states that the City is undertaking a plan that would reduce/reroute vehicular traffic, create greenways, and provide alternative modal access to five major development sites, including sites at Xavier University and near Uptown. NSR asserts that the City would take ownership of, and assume responsibility for, the safety and maintenance of the 10 bridges on the Line.

In addition to an exemption from the provisions of 49 U.S.C. 10903, NSR also seeks an exemption from the offer of financial assistance (OFA) procedures of 49 U.S.C. 10904. In support, NSR states that the Line is needed for a public purpose, as it is of critical significance to the City's redevelopment plans. NSR further asserts that there is no overriding public need for continued freight rail service. NSR's request for exemption from § 10904 will be addressed in the final decision.

According to NSR, the Line does not contain federally granted rights-of-way. Any documentation in NSR's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by August 10, 2016.

Any OFA under 49 CFR 1152.27(b)(2) to subsidize continued rail service will be due by August 19, 2016, or 10 days after service of a decision granting the petition for exemption, whichever occurs first. Each OFA must be accompanied by a $1,600 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment, the Line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for interim trail use/rail banking under 49 CFR 1152.29 will be due no later than June 1, 2016. Each interim trail use request must be accompanied by a $300 filing fee. *See* 49 CFR 1002.2(f)(27). However, NSR states that, because it seeks abandonment to allow the City to purchase the land for a public use, NSR is unwilling to negotiate interim trail use/rail banking.

All filings in response to this notice must refer to Docket No. AB 290 (Sub-No. 381X) and must be sent to: (1) Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001; and (2) William A Mullins, Baker & Miller PLLC, 2401 Pennsylvania Ave. NW., Suite 300, Washington, DC 20037. Replies to the petition are due on or before June 1, 2016.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis (OEA) at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by OEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact OEA to obtain a copy of the EA (or EIS). EAs in abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA generally will be within 30 days of its service.

Board decisions and notices are available on our Web site at "*WWW.STB.DOT.GOV.*"

Decided: May 9, 2016.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2016–11189 Filed 5–11–16; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee—New Task

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of a new task assignment for the Aviation Rulemaking Advisory Committee (ARAC).

SUMMARY: The FAA has assigned the Aviation Rulemaking Advisory Committee (ARAC) a new task to provide recommendations regarding the certification of persons engaged in operations involving the loading of special cargo. Assignment of this task is in response to National Transportation Safety Board Recommendation A–15–014 which recommended that the FAA create a certification for personnel responsible for the loading, restraint, and documentation of special cargo loads on transport-category airplanes. This notice informs the public of the new ARAC activity and solicits membership for the new Loadmaster Certification Working Group.

FOR FURTHER INFORMATION CONTACT: Stephen Grota Cargo Focus Team, AFS–340 Federal Aviation Administration, 950 L'Enfant Plaza SW., 5th Floor, Washington, DC 20024, *stephen.grota@faa.gov,* phone number (781) 238–7528.

SUPPLEMENTARY INFORMATION:

ARAC Acceptance of Task

As a result of its March 23, 2016, ARAC meeting, the ARAC accepted this tasking to establish the Loadmaster Certification Working Group. The Loadmaster Certification Working Group will serve as staff to the ARAC and provide advice and recommendations on the assigned task. The ARAC will review and accept the recommendation report and will submit it to the FAA.

Background

The FAA established the ARAC to provide information, advice, and recommendations on aviation related issues that could result in rulemaking to the FAA Administrator, through the Associate Administrator for Aviation Safety.

On April 29, 2013, a Boeing 747–400 BCF operated by an air carrier conducting all-cargo operations crashed shortly after takeoff from Bagram Air Base, Bagram, Afghanistan. The airplane was destroyed from impact forces and post-crash fire. The flight was a supplemental operation conducted under part 121 of Title 14, Code of Federal Regulations (14 CFR) and was being conducted under a multimodal contract with the US Transportation Command. The intended destination for the flight was Dubai World Central—Al Maktoum International Airport, Dubai, United Arab Emirates.

The airplane's cargo included five mine-resistant ambush-protected (MRAP) vehicles secured onto pallets with shoring. Two vehicles were 12-ton MRAP all-terrain vehicles (M–ATVs) and three were 18-ton Cougars. These vehicles were considered special cargo because they could not be placed in unit load devices (ULDs) and restrained in the airplane using the locking capabilities of the airplane's main deck cargo handling system. Instead, the vehicles were secured to centerline-loaded floating pallets and restrained to the airplane's main deck using tie-down straps. Special cargo is defined in appendix C of AC 120–85A, Air Cargo Operations, as "cargo not contained in a ULD certified for the airplane cargo loading system (CLS) or not enclosed in a cargo compartment certified for bulk loading. This type of cargo requires special handling and securing/restraining procedures."

During takeoff, the airplane immediately climbed steeply, then descended in a manner consistent with an aerodynamic stall. The National Transportation Safety Board (NTSB) investigation found strong evidence that at least one of the rear MRAP vehicles moved aft into the tail section of the airplane, damaging hydraulic systems and horizontal stabilizer components and making it impossible for the flightcrew to maintain pitch control of the airplane. The NTSB determined that the probable cause of this accident was the air carrier's inadequate procedures for restraining special cargo loads, which resulted in the loadmaster's improper restraint of the cargo, which moved aft and damaged hydraulic systems numbers 1 and 2 and horizontal stabilizer drive mechanism components, rendering the airplane uncontrollable (NTSB Aircraft Accident Report NTSB/AAR–15/01 PB2015–104951).

As a result of this accident, the NTSB issued Safety Recommendation A–15–14 which recommended, in part, that the FAA "[c]reate a certification for personnel responsible for the loading, restraint, and documentation of special cargo loads on transport-category airplanes." Currently, there is no certificated position for the loading of special cargo specified in the FAA's regulations. Therefore, there are no specific individual standards or training requirements to ensure adherence to operational limitations. Additionally, there is no specific FAA oversight of these personnel outside of that normally conducted of a certificate holder's operations. The FAA believes that such oversight is especially critical when special cargo is carried in an aircraft.

Persons performing special cargo loading functions typically prepare and validate the accuracy of aircraft load manifests and ensure the aircraft is loaded according to an approved schedule that ensures the aircraft's center of gravity is within approved limits. Proper performance of these functions is critical to ensure the flight characteristics of an aircraft are not adversely affected and that its structural limitations are not exceeded.

The Task

The Loadmaster Certification Working Group is tasked to:

1. Provide advice and recommendations to the ARAC on whether safety would be enhanced if persons engaged in the loading and supervision of the loading of special cargo, to include the preparation and accuracy of special cargo load plans, be certificated. If the Working Group recommends certification of these persons, it should also provide recommendations regarding which specific operations should require the use of these certificated persons. Additionally, it should also recommend appropriate knowledge, experience, and skill requirements for the issuance of the certificates and appropriate privileges and limitations.
2. Determine the effect of its recommendations on impacted parties.
3. Develop a report containing recommendations based upon its analysis and findings. The report should document both majority and dissenting positions on its recommendations and findings and the rationale for each position. Any disagreements should be documented, including the rationale for each position and the reasons for the disagreement.

In developing this report the Working Group shall familiarize itself with:

1. NTSB Aircraft Accident Report NTSB/AAR–15/01 PB2015–104951NTSB, with particular attention provided to Safety Recommendation A–15–14.
2. AC 120–85A, Air Cargo Operations.
3. Minutes of the June 30, 2015 B747 Special Cargo Load Meeting.

The working group may be reinstated to assist the ARAC by responding to FAA's questions or concerns after its recommendations have been submitted.

Schedule

The recommendation report should be submitted to the FAA for review and acceptance no later than 24 months from the publication date of this notice in the **Federal Register**.

Working Group Activity

The Loadmaster Certification Working Group must comply with the procedures adopted by the ARAC and:

1. Conduct a review and analysis of the assigned tasks and any other related materials or documents.
2. Draft and submit a work plan for completion of the task, including the rationale supporting such a plan, for consideration by the ARAC.
3. Provide a status report at each ARAC meeting.
4. Draft and submit the recommendation report based on the review and analysis of the assigned tasks.
5. Present the recommendation report at the ARAC meeting.

Participation in the Working Group

The Loadmaster Certification Working Group will be comprised of technical experts having an interest in the assigned task. A working group member need not be a member representative of the ARAC. The FAA would like a wide range of members to ensure all aspects of the tasks are considered in development of the recommendations. The provisions of the August 13, 2014, Office of Management and Budget guidance, "Revised Guidance on Appointment of Lobbyists to Federal Advisory Committees, Boards, and Commissions" (79 FR 47482), continues the ban on registered lobbyists participating on Agency Boards and Commissions if participating in their "individual capacity." The revised guidance now allows registered lobbyists to participate on Agency Boards and Commissions in a "representative capacity" for the "express purpose of providing a committee with the views of a nongovernmental entity, a recognizable group of persons or nongovernmental entities (an industry, sector, labor unions, or environmental groups, etc.) or state or local government" (For further information, see the Lobbying Disclosure Act of 1995 (LDA) as amended, 2 U.S.C. 1603, 1604, and 1605).

If you wish to become a member of the Loadmaster Certification Working Group, contact the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire. Describe your interest in the task and state the expertise you would bring to the working group. The FAA must receive all requests by June 13, 2016. The ARAC and the FAA will review the requests and advise you whether or not your request is approved.

If you are chosen for membership on the working group, you must actively participate in the working group, attend all meetings, and provide written comments when requested. You must devote the resources necessary to support the working group in meeting any assigned deadlines. You must keep your management and those you may represent advised of working group activities and decisions to ensure the proposed technical solutions do not conflict with the position of those you represent. Once the working group has begun deliberations, members will not be added or substituted without the approval of the ARAC Chair, the FAA, including the Designated Federal Officer, and the Working Group Chair.

The Secretary of Transportation determined the formation and use of the ARAC is necessary and in the public interest in connection with the performance of duties imposed on the FAA by law. The ARAC meetings are open to the public. However, meetings of the Loadmaster Certification Working Group are not open to the public, except to the extent individuals with an interest and expertise are selected to participate. The FAA will make no public announcement of working group meetings.

Issued in Washington, DC, on May 4, 2016.

Lirio Liu,

Designated Federal Officer, Aviation Rulemaking Advisory Committee.

[FR Doc. 2016–11104 Filed 5–11–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Sunshine Act Meetings; Unified Carrier Registration Plan Board of Directors

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of Unified Carrier Registration Plan Board of Directors Meeting.

TIME AND DATE: The meeting will be held on June 8, 2016, from 9:00 a.m. to 1:00 p.m. Eastern Daylight Time.

PLACE: The meetings will be open to the public at the Courtyard Providence Downtown by Marriott, 32 Exchange Terrace at Memorial Blvd., Providence, RI 02903, and via conference call. Those not attending the meetings in person may call 1–877–422–1931, passcode 2855443940, to listen and participate in the meetings.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Board of Directors (the Board) will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement and to that end, may consider matters properly before the Board.

FOR FURTHER INFORMATION CONTACT: Mr. Avelino Gutierrez, Chair, Unified Carrier Registration Board of Directors at (505) 827–4565.

Issued on: May 6, 2016.

Larry W. Minor,

Associate Administrator, Office of Policy, Federal Motor Carrier Safety Administration.

[FR Doc. 2016–11312 Filed 5–10–16; 4:15 pm]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2016–0046]

Petition for Waiver of Compliance

In accordance with part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated April 28, 2016, Union Railroad (UR) petitioned the Federal Railroad Administration (FRA) for renewal of a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 229—Railroad Locomotive Safety Standards. This regulatory relief was initially granted by FRA in 1980 and is due to expire in 2017 under the "sunset clause" added to 49 CFR 229.19—*Prior waivers,* in 2012. This relief was formerly handled under Docket Number LI–80–24; however FRA has updated the docket numbering system and assigned this petition Docket Number FRA–2016–0046.

The waiver in Docket Number LI–80–24 granted UR relief from the requirement of 49 CFR 229.123—*Pilots, snowplows, end plates,* that locomotives be equipped with a pilot, snowplow, or end plate extending across both rails for 121 locomotives, 32 of which remain in service. These locomotives are not equipped with a pilot, snowplow, or end plate but have hose boxes or brackets above the rails with open space between. UR states that these locomotives operate over yard and mainline track, within and between three steel mills. The total track length of UR is 20 miles, with three public grade crossings (two with gates and flashers, one with flashers only) and trains are limited to 20 mph. UR reports that there have been no known safety-related incidents or operating difficulties associated with this waiver.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by June 27, 2016 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.* See also *http://www.regulations.gov/#!privacyNotice* for the privacy notice of regulations.gov.

Robert C. Lauby,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2016–11216 Filed 5–11–16; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2016–0034]

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 of the Code of Federal Regulations (CFR), this document provides the public notice that by a document dated April 8, 2016, Portland and Western Railroad (PNWR), owned by Genesee & Wyoming, has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR 213.234, *Automated inspection of track constructed with concrete crossties.* FRA assigned the petition Docket Number FRA–2016–0034.

PNWR requests a waiver of compliance from 49 CFR 213.234(b)(3), which requires an annual automated inspection of track constructed with concrete crossties. PNWR's proposal identifies a 16.8-mile segment of track constructed with concrete crossties and indicates that 160 commuter trains per week operate over it, as well as an annual 5 million gross tons of freight traffic.

PNWR submits that because there is relatively light wheel loading of commuter trains, which are limited to 60 mph, and freight operations, due to a 40 mph speed limit, it is unnecessary to conduct annual automated inspections on this concrete crosstie segment. In lieu of annual automated inspection, PNWR proposes to (1) provide annual training and inspection procedures to identify and report exceptions to conditions described in 49 CFR 213.109(d)(4) involving all 213.7-qualified persons responsible for supervision and inspection of the TriMet Westside Express Service track segment; (2) conduct bi-annual walking inspections to detect noncompliant track conditions including rail seat deterioration; and (3) supplement walking inspection with twice-annual inspections with a hi-rail vehicle instrumented with a Track Geometry Measurement System.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by June 27, 2016 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.* See also *http://www.regulations.gov/#!privacyNotice* for the privacy notice of regulations.gov.

Robert C. Lauby,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2016–11215 Filed 5–11–16; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2016–0048]

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

In accordance with part 235 of Title 49 Code of Federal Regulations (CFR) and 49 U.S.C. 20502(a), this document provides the public notice that by a document dated April 27, 2016, Norfolk Southern Railway (NS) petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of a signal system. FRA assigned the petition Docket Number FRA–2016–0048.

Applicant: Norfolk Southern Railway, Mr. B. L. Sykes, Chief Engineer, C&S Engineering, 1200 Peachtree Street NE., Atlanta, GA 30309.

NS seeks approval of the modification of Control Point (CP) Cast East End on the New Castle District, CF Main Line, Milepost (MP) CF 101.8 at New Castle, IN.

CP Cast East End will be replaced with a hold-out signal, located at MP CF 102.38, and the power-operated switch will be replaced with a hand-operated switch with an electric lock.

These changes are being proposed to improve operations in the area.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by June 27, 2016 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.* See also *http://www.regulations.gov/#!privacyNotice* for the privacy notice of regulations.gov.

Robert C. Lauby,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2016–11217 Filed 5–11–16; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2016 0044]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel HAPPY TIME; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before June 13, 2016.

ADDRESSES: Comments should refer to docket number MARAD–2016–0044. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel HAPPY TIME is:

Intended Commercial Use Of Vessel: "Crewed charter yacht".

Geographic Region: "Puerto Rico".

The complete application is given in DOT docket MARAD–2016–0044 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: April 28, 2016.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2016–11162 Filed 5–11–16; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2016 0045]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel SEAS THE MOMENT; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before June 13, 2016.

ADDRESSES: Comments should refer to docket number MARAD–2016 0045. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION:

As described by the applicant the intended service of the vessel SEAS THE MOMENT is: *Intended Commercial Use Of Vessel:* "The vessel will be placed in a charter fleet for rent when not in use by friends and family".

Geographic Region: "Minnesota, Wisconsin, Illinois, Indianapolis, Ohio, Michigan, Pennsylvania, New York".

The complete application is given in DOT docket MARAD–2016–0045 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: April 28, 2016.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2016–11161 Filed 5–11–16; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2016 0042]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel OFF CAY; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before June 13, 2016.

ADDRESSES: Comments should refer to docket number MARAD–2016–0042. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel OFF CAY is: *Intended Commercial Use of Vessel:* "Sailing, sightseeing, snorkeling, sailing instruction: charters. Day sails and term charters" *Geographic Region:* "Puerto Rico. Florida, Georgia, South Carolina, North Carolina, Virginia, Maryland, Delaware, New York, New Jersey, Connecticut, Rhode Island, Massachusetts, New Hampshire, Maine."

The complete application is given in DOT docket MARAD–2016–0042 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: April 28, 2016.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2016–11164 Filed 5–11–16; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2016 0040]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel TIGRESS; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before June 13, 2016.

ADDRESSES: Comments should refer to docket number MARAD–2016–0040. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel TIGRESS is:

Intended Commercial Use Of Vessel: "6 pack passenger charter to be used in the San Francisco Bay and Sacramento Delta"

Geographic Region: "California"

The complete application is given in DOT docket MARAD–2016–0040 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: April 28, 2016.

T. Mitchell Hudson, Jr.

Secretary, Maritime Administration.

[FR Doc. 2016–11160 Filed 5–11–16; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2016 0043]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel PALADIN; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before June 13, 2016.

ADDRESSES: Comments should refer to docket number MARAD–2016–0043. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel PALADIN is:

Intended Commercial Use of Vessel: "Sport fishing day trips out of Ketchikan, AK"

Geographic Region: "Southeast Alaska(from Gore Point south to the Canadian border)"

The complete application is given in DOT docket MARAD–2016–0043 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: April 28, 2016.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2016–11159 Filed 5–11–16; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2016 0041]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel ORION; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime

Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before June 13, 2016.

ADDRESSES: Comments should refer to docket number MARAD–2016–0041. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel ORION is:

Intended Commercial Use of Vessel: "6 passengers for hire to perform scattering-of-ashes-at-sea ceremonies"

Geographic Region: "California".

The complete application is given in DOT docket MARAD–2016–0041 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: April 28, 2016.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2016–11163 Filed 5–11–16; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2015–0084; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming Model Year 2012 Jeep Wrangler Multipurpose Passenger Vehicles Manufactured for the Mexican Market Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Receipt of petition.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that model year (MY) 2012 Jeep Wrangler multipurpose passenger vehicles (MPVs) that were manufactured for sale in the Mexican market and not originally manufactured to comply with all applicable Federal motor vehicle safety standards (FMVSS), are eligible for importation into the United States because they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards (the U.S.-certified version of the 2012 Jeep Wrangler MPV) and they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is June 13, 2016.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251

Instructions: Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

How to Read Comments submitted to the Docket: You may read the comments received by Docket Management at the address and times given above. You may also view the documents from the Internet at *http://www.regulations.gov.* Follow the online instructions for accessing the dockets. The docket ID number and title of this notice are shown at the heading of this document notice. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

FOR FURTHER INFORMATION CONTACT: George Stevens, Office of Vehicle Safety Compliance, NHTSA (202–366–5308).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless

NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Mesa Auto Wholesalers (Mesa), of Chandler, Arizona (Registered Importer R–94–018) has petitioned NHTSA to decide whether nonconforming 2012 Jeep Wrangler MPV's manufactured for the Mexican market are eligible for importation into the United States. The vehicles which Mesa believes are substantially similar are MY 2012 Jeep Wrangler MPV's sold in the United States and certified by their manufacturer as conforming to all applicable FMVSS.

The petitioner claims that it compared non-U.S. certified MY 2012 Jeep Wrangler MPV's that were manufactured for the Mexican market to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most FMVSS.

Mesa submitted information with its petition intended to demonstrate that non-U.S. certified MY 2012 Jeep Wrangler MPV's manufactured for the Mexican market, as originally manufactured, conform to many applicable FMVSS in the same manner as their U.S.-certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non U.S.-certified MY 2012 Jeep Wrangler MPV's manufactured for the Mexican market, as originally manufactured, conform to: Standard Nos. 102 *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect,* 103 *Windshield Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 106 *Brake Hoses,* 108 *Lamps, Reflective Devices and Associated Equipment,* 111 *Rearview Mirrors,* 113 *Hood Latch System,* 114 *Theft Protection,* 116 *Motor Vehicle Brake Fluids,* 118 *Power-Operated Window, Partition, and Roof panel System,* 124 *Accelerator Control Systems,* 126 *Electronic Stability Control Systems,* 135 *Light Vehicle Brake Systems,* 138 *Tire Pressure Monitoring Systems,* 201 *Occupant Protection in Interior Impact,* 202a *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 208 *Occupant Crash Protection,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Mounting,* 213 *Child Restraint Systems,* 214 *Side Impact Protection,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* 225 *Child Restraint Anchorage Systems,* 301 *Fuel System Integrity,* and 302 *Flammability of Interior Materials.*

The petitioner also contends that the subject non-U.S certified vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* replacement of the instrument cluster with U.S. model components that include a brake warning indicator and vehicle speed markings such that the vehicle, as modified, will fully comply with the standard.

Standard No. 110 *Tire Selection and Rims:* installation of the required tire information placard printed in English.

The petitioner additionally states that a vehicle identification plate must be affixed to the vehicle near the left windshield pillar to meet the requirements of 49 CFR part 565.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above addresses both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A), (a)(1)(B), and (b)(1); 49 CFR 593.7; delegation of authority at 49 CFR 1.95 and 501.8.

Jeffrey M. Giuseppe,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2016–11144 Filed 5–11–16; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Delayed Applications

AGENCY: Office of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of application delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), PHMSA is publishing the following list of special permit applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: Ryan Paquet, Director, Office of Hazardous Materials Special Permits and Approvals, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535

SUPPLEMENTARY INFORMATION:

Key to "Reason for Delay"

1. Awaiting additional information from applicant
2. Extensive public comment under review
3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis
4. Staff review delayed by other priority issues or volume of special permit applications

Meaning of Application Number Suffixes

N—New application
M—Modification request
R—Renewal Request
P—Party To Exemption Request

Issued in Washington, DC, on April 27, 2016.

Donald Burger,

Chief, General Approvals and Permits.

Application No.	Applicant	Reason for delay	Estimated date of completion
Modification to Special Permits			
16412–M	Nantong CIMC Tank Equipment Co. Ltd., Jiangsu, Province	4	05–31–2016
16035–M	LCF Systems, Inc., Scottsdale, AZ	4	05–31–2016
14778–M	Metalcraft/Sea-Fire Marine, Baltimore, MD	4	05–31–2016
15610–M	TechKnowServ Corp., State College, PA	4	05–31–2016
15537–M	Alaska Pacific Powder Company, Watkins, CO	4	05–31–2016
7607–M	Thermo Fisher Scientific, Franklin, MA	4	05–31–2016
New Special Permit Applications			
16495–N	TransRail Innovation Inc., Calgary	4	05–31–2016
16524–N	Quantum Fuel Systems Technologies Worldwide, Inc., Lake Forest, CA	4	05–15–2016
16463–N	Salco Products, Lemont, IL	3	05–31–2016
16559–N	HTEC Hydrogen Technology & Energy Corporation, North Vancouver, BC, Canada	4	05–30–2016
16571–N	Chevron USA Inc., Picayune, MS	4	05–15–2016
16560–N	LightSail Energy, Inc., Berkeley, CA	4	05–10–2016
15767–N	Union Pacific, Railroad Company, Omaha, NE	3	05–31–2016

[FR Doc. 2016–10937 Filed 5–11–16; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Application for Special Permits

AGENCY: Office of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before June 13, 2016.

ADDRESSES: *Address Comments To:* Record Center, Pipeline and Hazardous Materials Safety Administration U.S. Department of Transportation Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Ryan Paquet, Director, Office of Hazardous Materials Approvals and Permits Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC or at *http.regulations.gov.*

This notice of receipt of applications for special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on April 21, 2016.

Donald Burger,

Chief, General Approvals and Permits.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
20222–N		Trinity Containers, LLC	178.337–3 (g)(3)	To authorize the transportation in commerce of certain DOT Specification MC–331 cargo tank motor vehicles with a water capacity greater than 3,500 gallons, manufactured to the DOT MC–331 specification, constructed of non-quenched and tempered ("NQT") steel except that the cargo tanks have baffle support clips welded directly to the inside of the cargo tank wall without the use of pads.
20223–N		A & P Helicopters, Inc	175.1(a), 172.101(j), 172.200, 172.300, 173.1, 172.400.	To authorize the transportation in commerce of certain hazardous materials by 14 CFR part 133 Rotorcraft External Load Operations transporting hazardous materials attached to or suspended from an aircraft in remote areas of the U.S. only.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
20225–N		Alaska Air Taxi, LLC	173.62(c), 172.101(j)	To authorize the transportation in commerce of certain Class 1 explosive materials which are Forbidden for transportation by cargo aircraft within the state of Alaska when other means of transportation are impractical or not available.
20226–N		Awesome Flight, LLC	173.27(b)(3)	To authorize the transportation of lithium ion batteries in excess of the authorized quantity limitations via passenger and cargo aircraft.
20228–N		Worthington Cylinder Corporation.	173.302(f)(3), 173.302(f)(4), 173.302(f)(5), 173.302a (a)(1), 173.304a(a)(1), 175.501(e)(3).	To authorize the manufacture, marking, sale, and use of non-DOT specification fully wrapped carbon fiber reinforced steel lined cylinders for the transportation in commerce.
20232–N		Leidos Biomedical Research, Inc.	173.196(c)	To authorize the transportation in commerce of live animals infected with Category B infectious substances.

[FR Doc. 2016–10940 Filed 5–11–16; 8:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Actions on Special Permit Applications

AGENCY: Office of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of actions on special permit applications.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given of the actions on special permits applications in (October to October 2014). The mode of transportation involved are identified by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Special Permits. It should be noted that some of the sections cited were those in effect at the time certain special permits were issued.

Issued in Washington, DC, on April 27, 2016.

Don Burger,

Chief, Special Permits and Approvals Branch.

MODIFICATION SPECIAL PERMIT GRANTED

S.P. No.	Applicant	Regulation(s)	Nature of special permit thereof
14437–M	Columbiana Boiler Company (CBCo) LLC Columbiana, OH.	49 CFR 179.300	To modify the special permit to authorize an additional manufacturing specification CBC 106W and the removal or clarification of language inconsistent with 179.300–19.
9847–M	FIBA Technologies, Inc. Millbury, MA.	49 CFR 180.209(a), 180.205(c), (f), (g), and (i), 173.302a(b)(2), (3), (4), and (5), and 180.213.	To modify the special permit to authorize DOT Specification 3AAX-6000 seamless steel cylinders to be requalified by acoustic emission and ultrasonic examinations (AE/UE).
14799–M	Takata Sachsen GmbH GroBweitzschen.	49 CFR 173.301(a) and 173.302a	To modify the shipping description for UN3268 and add the description Safety devices, pyrotechnic, Division 1.4G, UN0503.
16514–M	Robert Bosch Tool Corporation Mt. Prospect, IL.	49 CFR 172.301(c), 173.185(c)(1)(iii), 173.185(c)(3)(i).	To modify the special permit to increase the watt-hour (Wh) rating of lithium ion cells and batteries from 20 Wh to 60 Wh for cells and from 100 Wh to 300 Wh for batteries.
16061–M	Battery Solutions, LLC Howell, MI.	49 CFR 172.200, 172.300, 172.400.	To modify the special permit to authorize dry cell batteries each with a marked rating up to 12 volts to be transported without short circuit protection; to increase the quantity of lithium metal authorized in each battery from 5 grams to 25 grams; to increase the weight of each non-spillable battery authorized from 11 pounds to 25 pounds; and to correct the Packing Groups in paragraph 6.
14298–M	Air Products and Chemicals, Inc. Allentown, PA.	49 CFR 180.209(a) and (b)	To modify the special permit to authorize DOT specification 3A or 3AA tubes with a capacity greater than 125 lbs mounted in an ISO or tube trailer frame to not be removed from bundles or be hammer tested prior to refilling and to align the markings requirements for ISO or tube trailer frame mounted DOT specification 3A or 3AA cylinders with those for DOT 3A, 3AA, 3AX, 3AAX or 3T cylinders in tube trailers.

MODIFICATION SPECIAL PERMIT GRANTED—Continued

S.P. No.	Applicant	Regulation(s)	Nature of special permit thereof
14453–M	FIBA Technologies, Inc. Millbury, MA.	49 CFR 180.209	To modify the special permit to authorize an additional Division 2.2 material.
16531–M	NVIDIA Corporation Santa Clara, CA.	49 CFR 173.185(c)(3); 173.185(f)	To modify the special permit originally issued on an emergency basis to authorize an additional two years.
11378–M	National Aeronautics and Space Administration (NASA) Washington, DC.	49 CFR 173.201; 173.226; 173.227; 178.61–5; 178.61–20; 173.40.	To modify the special permit to authorize an additional hazardous material.
16624–M	AREVA Inc. Richland, WA	49 CFR 173.301(a)(1)	To modify the special permit originally issued on an emergency basis to authorize an additional two years and clarify certain requirements contained in paragraph 7, safety control measures.
15691–M	Department of Defense Scotts AFB, IL.	49 CFR 180.209	To modify the special permit to authorize clarifying the requirements for the purpose and limitation and safety control measures.
NEW SPECIAL PERMIT GRANTED			
16001–N	VELTEK Associates, Inc. Malvern, PA.	49 CFR parts 100–180	To authorize exceptions to specification packaging, marking and labeling requirements for certain isopropyl alcohol formulations. (modes 1, 2, 3, 4, 5)
16452–N	The Procter & Gamble Company Cincinnati, OH.	49 CFR parts 171–180	To authorize the transportation in commerce of small quantities of certain Division 2.2 gases in small, non-refillable, plastic receptacles as not subject to the Hazardous Materials Regulations. (modes 1, 2, 3, 4, 5)
16477–N	Hydroid, Inc. Pocasset, MA	49 CFR 173.185(e)	To authorize the transportation in commerce of certain prototype and low production lithium ion batteries contained in equipment. (modes 1, 2, 3)
16598–N	Spaceflight, Inc. Tukwila, WA	49 CFR 173.185(a)(1)	To authorize the one-time transportation in commerce of three low production lithium ion batteries contained in equipment (SHERPA spacecraft) that are not of a type proven to meet the criteria in Part III, sub-section 38.3 of the UN Manual of Tests and Criteria. (mode 1)
16606–N	5-State Helicopters, Inc. Royse City, TX.	49 CFR 172.101 Hazardous Materials Table Column (9B), Subpart C of Part 172, 172.301(c), 175.30.	To authorize the transportation in commerce in the U.S. only of certain hazardous materials by 14 CFR part 133 Rotorcraft External Load Operations transporting hazardous materials attached to or suspended from an aircraft. Such transportation is in support of construction operations when the use of cranes or other lifting devices is impracticable or unavailable or when aircraft is the only means of transportation, without being subject to certain hazard communication requirements, quantity limitations, packaging and loading and storage requirements. (mode 4)
16612–N	Unipart North America Limited Oxford, United Kingdom.	49 CFR 172.102(c), Special Provision A54, ICAO TI Special Provision A99.	To authorize the transportation in commerce of lithium ion batteries exceeding the 35 kg maximum weight per package aboard cargo aircraft only. (mode 4)
Denied			
8451–M	Request by Veolia ES Technical Solutions, L.L.C. Flanders, NJ March 04, 2016. To modify the special permit to authorize transportation to a final disposal facility.		

[FR Doc. 2016–10935 Filed 5–11–16; 8:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

Advisory Board; Notice of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I), notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation (SLSDC). The meeting will be held from 10:00 a.m. to 12 noon (EDT) on Tuesday, June 14, 2016 via conference call at the SLSDC's Policy Headquarters, 55 M Street SE., Suite 930, Washington, DC 20003. The agenda for this meeting will be as follows: Opening Remarks; Consideration of Minutes of Past Meeting; Quarterly Report; Old and New Business; Closing Discussion; Adjournment.

Attendance at the meeting is open to the interested public but limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact, not later than Thursday, June 9, 2016, Charles Wipperfurth, Deputy Chief of Staff, Saint Lawrence Seaway Development Corporation, 1200 New Jersey Avenue SE., Washington, DC 20590; 202–366–0091.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, DC, on May 9, 2016.

Carrie Lavigne,

Chief Counsel.

[FR Doc. 2016–11210 Filed 5–11–16; 8:45 am]

BILLING CODE 4910–61–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Submission for OMB Review; Municipal Securities Dealers and Government Securities Brokers and Dealers—Registration and Withdrawal

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995 (PRA).

In accordance with the requirements of the PRA (44 U.S.C. chapter 35), the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning the renewal of its information collection titled, "Municipal Securities Dealers and Government Securities Brokers and Dealers—Registration and Withdrawal." The OCC also is giving notice that it has sent the collection to OMB for review.

DATES: You should submit written comments by June 13, 2016.

ADDRESSES: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email, if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Mail Stop 9W–11, Attention: 1557–0184, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465–4326 or by electronic mail to *prainfo@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Additionally, please send a copy of your comments by mail to: OCC Desk Officer, 1557–0184, U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503, or by email to: *oira submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, Clearance Officer, (202) 649–5490 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: Municipal Securities Dealers and Government Securities Brokers and Dealers—Registration and Withdrawal.

OMB Control No.: 1557–0184.

Form Numbers: MSD, MSDW,[1] MSD–4, MSD–5, G–FIN, G–FINW, GFIN–4 and GFIN–5.[2]

Abstract: This information collection is required to satisfy the requirements of section 15B[3] and section 15C[4] of the Securities Exchange Act of 1934, which require, in part, any national bank or Federal savings association that acts as a government securities broker/dealer or a municipal securities dealer to file the relevant form with the OCC to inform the agency of its broker/dealer activities. The OCC uses this information to determine which national banks and Federal savings associations are acting as government securities broker/dealers and municipal securities dealers and to monitor entry into and exit from these activities by institutions and registered persons. The OCC also uses the information in planning national bank and Federal savings association examinations.

Type of Review: Regular.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 19 (8 government securities dealers; 1 municipal securities dealer; and 10 municipal and government securities dealers).

Estimated Number of Responses: 802.

Frequency of Response: On occasion.

Estimated Annual Burden: 736 burden hours.

On March 1, 2016, the OCC published a notice regarding this collection for 60 days of comment, 81 FR 10716. No comments were received. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the information collection burden;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 9, 2016.

Mary Hoyle Gottlieb,

Regulatory Specialist, Legislative & Regulatory Activities Division.

[FR Doc. 2016–11213 Filed 5–11–16; 8:45 am]

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[1] The Securities and Exchange Commission (SEC) maintains collections for the MSD and MSDW under OMB Control Nos. 3235–0083 and 3235–0087, however, there is a requirement that these be filed with the OCC, which is covered by OMB Control No. 1557–0184.

[2] The Department of the Treasury maintains collections for the G–FIN–4 and G–FIN–5 under OMB Control No. 1535–0089, however there is a requirement that they be filed with the OCC, which is covered by OMB Control No. 1557–0184.

[3] 15 U.S.C. 78o–4.

[4] 15 U.S.C. 78o–5.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
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Part II

Department of Labor

29 CFR Parts 1904 and 1902
Improve Tracking of Workplace Injuries and Illnesses; Final Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1904 and 1902

[Docket No. OSHA–2013–0023]

RIN 1218–AC49

Improve Tracking of Workplace Injuries and Illnesses

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule.

SUMMARY: OSHA is issuing a final rule to revise its Recording and Reporting Occupational Injuries and Illnesses regulation. The final rule requires employers in certain industries to electronically submit to OSHA injury and illness data that employers are already required to keep under existing OSHA regulations. The frequency and content of these establishment-specific submissions is set out in the final rule and is dependent on the size and industry of the employer. OSHA intends to post the data from these submissions on a publicly accessible Web site. OSHA does not intend to post any information on the Web site that could be used to identify individual employees.

The final rule also amends OSHA's recordkeeping regulation to update requirements on how employers inform employees to report work-related injuries and illnesses to their employer. The final rule requires employers to inform employees of their right to report work-related injuries and illnesses free from retaliation; clarifies the existing implicit requirement that an employer's procedure for reporting work-related injuries and illnesses must be reasonable and not deter or discourage employees from reporting; and incorporates the existing statutory prohibition on retaliating against employees for reporting work-related injuries or illnesses. The final rule also amends OSHA's existing recordkeeping regulation to clarify the rights of employees and their representatives to access the injury and illness records.

DATES: This final rule becomes effective on January 1, 2017, except for §§ 1904.35 and 1904.36, which become effective on August 10, 2016.

Collections of information: There are collections of information contained in this final rule (*see* Section XI, Office of Management and Budget Review Under the Paperwork Reduction Act of 1995). Notwithstanding the general date of applicability that applies to all other requirements contained in the final rule, affected parties do not have to comply with the collections of information until the Department of Labor publishes a separate document in the **Federal Register** announcing that the Office of Management and Budget has approved them under the Paperwork Reduction Act.

ADDRESSES: In accordance with 28 U.S.C. 2112(a)(2), OSHA designates Ann Rosenthal, Associate Solicitor of Labor for Occupational Safety and Health, Office of the Solicitor, Room S–4004, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, to receive petitions for review of the final rule.

FOR FURTHER INFORMATION CONTACT: *For press inquiries:* Frank Meilinger, OSHA, Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–1999; email: *meilinger.francis2@dol.gov*

For general and technical information: Miriam Schoenbaum, OSHA, Office of Statistical Analysis, Room N–3507, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–1841; email: *schoenbaum.miriam@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. Table of Contents

The following table of contents identifies the major sections of the preamble to the final rule revising OSHA's Occupational Injury and Illness Recording and Reporting Requirements regulation (Improving tracking of workplace injuries and illnesses):

- I. Background
  - A. Table of Contents
  - B. References and Exhibits
  - C. Introduction
  - D. Regulatory History
- II. Legal Authority
- III. Section 1904.41
  - A. Background
  - B. The Proposed Rule
  - C. Comments on the Proposed Rule
  - D. The Final Rule
- IV. Section 1902.7—State Plan Requirements
- V. Section 1904.35 and Section 1904.36
  - A. Background
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  - C. The Final Rule
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  - B. Costs
  - C. Benefits
  - D. Economic Feasibility
  - E. Regulatory Flexibility Certification
- VII. Unfunded Mandates
- VIII. Federalism
- IX. State Plan States
- X. Environmental Impact Assessment
- XI. Office of Management and Budget Review Under the Paperwork Reduction Act of 1995
- XII. Consultation and Coordination With Indian Tribal Governments

B. References and Exhibits

In this preamble, OSHA references documents in Docket No. OSHA–2013–0023, the docket for this rulemaking. The docket is available at *http://www.regulations.gov*, the Federal eRulemaking Portal.

References to documents in this rulemaking docket are given as "Ex." followed by the document number. The document number is the last sequence of numbers in the Document ID Number on *http://www.regulations.gov.* For example, Ex. 1, the proposed rule, is Document ID Number OSHA–2013–0023–0001.

The exhibits in the docket, including public comments, supporting materials, meeting transcripts, and other documents, are listed on *http://www.regulations.gov.* All exhibits are listed in the docket index on *http://www.regulations.gov.* However, some exhibits (*e.g.,* copyrighted material) are not available to read or download from that Web page. All materials in the docket are available for inspection and copying at the OSHA Docket Office, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2350.

C. Introduction

OSHA's regulation at 29 CFR part 1904 requires employers with more than 10 employees in most industries to keep records of occupational injuries and illnesses at their establishments. Employers covered by these rules must record each recordable employee injury and illness on an OSHA Form 300, which is the "Log of Work-Related Injuries and Illnesses," or equivalent. Employers must also prepare a supplementary OSHA Form 301 "Injury and Illness Incident Report" or equivalent that provides additional details about each case recorded on the OSHA Form 300. Finally, at the end of each year, employers are required to prepare a summary report of all injuries and illnesses on the OSHA Form 300A, which is the "Summary of Work-Related Injuries and Illnesses," and post the form in a visible location in the workplace.

This final rule amends OSHA's recordkeeping regulations to add requirements for the electronic submission of injury and illness information employers are already required to keep under part 1904. First, the final rule requires establishments with 250 or more employees to electronically submit information from their part 1904 recordkeeping forms (Forms 300, 300A, and 301) to OSHA or OSHA's designee on an annual basis. Second, the final rule requires establishments with 20 or more employees, but fewer than 250 employees, in certain designated industries, to electronically submit information from their part 1904 annual summary (Form 300A) to OSHA or OSHA's designee on an annual basis. Third, the final rule requires, upon notification, employers to electronically submit information from part 1904 recordkeeping forms to OSHA or OSHA's designee.

The electronic submission requirements in the final rule do not add to or change any employer's obligation to complete and retain injury and illness records under OSHA's regulations for recording and reporting occupational injuries and illnesses. The final rule also does not add to or change the recording criteria or definitions for these records.

OSHA intends to post the establishment-specific injury and illness data it collects under this final rule on its public Web site at *www.osha.gov.* The publication of specific data fields will be in part restricted by applicable federal law, including the Freedom of Information Act (FOIA), as well as specific provisions within part 1904. OSHA does not intend to post any information on the Web site that could be used to identify individual employees.

Additionally, OSHA's existing recordkeeping regulation requires employers to inform employees about how to report occupational injuries and illnesses (29 CFR 1904.35(a), (b)). This final rule amends OSHA's recordkeeping regulations to require employers to inform employees of their right to report work-related injuries and illnesses; clarifies the existing implicit requirement that an employer's procedure for reporting work-related injuries and illnesses must be reasonable and not deter or discourage employees from reporting; and incorporates the existing statutory prohibition on retaliating against employees for reporting work-related injuries or illnesses.

OSHA estimates that this final rule will have economic costs of $15 million per year, including $13.7 million per year to the private sector, with costs of $7.2 million per year for electronic submission for affected establishments with 250 or more employees and $4.6 million for electronic submission for affected establishments with 20 to 249 employees in designated industries. With respect to the anti-discrimination requirements of this final rule, OSHA estimates a first-year cost of $8.0 million and annualized costs of $0.9 million per year. When fully implemented, the first-year economic cost for all provisions of the final rule is estimated at $28 million. The rule will be phased in, which moves the annual cost for reporting case characteristic data from OSHA Forms 300 and 301 by 33,000 establishments from 2017 to 2018. This phase-in removes about $6.9 million from the first year costs, but those costs would reappear in years two through 10.

The Agency believes that the annual benefits, while unquantified, exceed the annual costs. These benefits include better compliance with OSHA's statutory directive "to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources" (29 U.S.C. 651(b)). They also include increased prevention of workplace injuries and illnesses as a result of expanded access to timely, establishment-specific injury/illness information by OSHA, employers, employees, employee representatives, potential employees, customers, potential customers, and researchers. The benefits of the final rule also include promotion of complete and accurate reporting of work-related injuries and illnesses.

D. Regulatory History

OSHA's regulations on recording and reporting occupational injuries and illnesses (29 CFR part 1904) were first issued in 1971 (36 FR 12612, July 2, 1971). This regulation requires the recording of work-related injuries and illnesses that involve death, loss of consciousness, days away from work, restriction of work, transfer to another job, medical treatment other than first aid, or diagnosis of a significant injury or illness by a physician or other licensed health care professional (29 CFR 1904.7).

On December 28, 1982, OSHA amended these regulations to partially exempt establishments in certain lower-hazard industries from the requirement to record occupational injuries and illnesses (47 FR 57699). OSHA also amended the recordkeeping regulations in 1994 (Reporting fatalities and multiple hospitalization incidents to OSHA, 29 CFR 1904.39) and 1997 (Annual OSHA injury and illness survey of ten or more employers, 29 CFR 1904.41).

In 2001, OSHA issued a final rule amending its requirements for the recording and reporting of occupational injuries and illnesses (29 CFR parts 1904 and 1902), along with the forms employers use to record those injuries and illnesses (66 FR 5916 (Jan. 19, 2001)). The final rule also updated the list of industries that are partially exempt from recording occupational injuries and illnesses. In 2014, OSHA again amended the part 1904 regulations to require employers to report work-related fatalities, in-patient hospitalizations, amputations, and losses of an eye to OSHA and to allow electronic reporting (79 FR 56130 (Sept. 18, 2014)). The final rule also revised the list of industries that are partially exempt from recording occupational injuries and illnesses.

On November 8, 2013, OSHA issued a proposed rule to amend its recordkeeping regulations to add requirements for electronic submission of injury and illness information that employers are already required to keep (78 FR 67254). In the preamble to the proposed rule, OSHA explained that, consistent with applicable Federal law, such as FOIA and specific provisions of part 1904, the Agency intended to post the recordkeeping data it collects on its public Web site. A public meeting on the proposed rule was held on January 9–10, 2014. A concern raised by many meeting participants was that the proposed electronic submission requirement might create a motivation for employers to under-report injuries and illnesses. Some participants also commented that some employers already discourage employees from reporting injuries or illnesses by disciplining or taking other adverse action against employees who file injury and illness reports. As a result, on August 14, 2014, OSHA issued a supplemental notice to the proposed rule seeking comments on whether to amend the part 1904 regulations to prohibit employers from taking adverse action against employees for reporting occupational injuries and illnesses. OSHA received 311 comments on the electronic submission section of the proposed rule and 142 comments on the supplemental notice to the proposed rule. The comments for the proposed rule and the supplemental notice to the proposed rule are addressed below.

II. Legal Authority

OSHA is issuing this final rule pursuant to authority expressly granted by sections 8 and 24 of the Occupational Safety and Health Act (the "OSH Act" or "Act") (29 U.S.C. 657, 673). Section 8(c)(1) requires each employer to "make, keep and preserve, and make available to the Secretary [of Labor] or the

Secretary of Health and Human Services, such records regarding his activities relating to this Act as the Secretary . . . may prescribe by regulation as necessary or appropriate for the enforcement of this Act or for developing information regarding the causes and prevention of occupational accidents and illnesses" (29 U.S.C. 657(c)(1)). Section 8(c)(2) directs the Secretary to prescribe regulations "requiring employers to maintain accurate records of, and to make periodic reports on, work-related deaths, injuries and illnesses other than minor injuries requiring only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job" (29 U.S.C. 657(c)(2)). Finally, section 8(g)(2) of the OSH Act broadly empowers the Secretary to "prescribe such rules and regulations as he may deem necessary to carry out [his] responsibilities under this Act" (29 U.S.C. 657(g)(2)).

Section 24 of the OSH Act (29 U.S.C. 673) contains a similar grant of authority. This section requires the Secretary to "develop and maintain an effective program of collection, compilation, and analysis of occupational safety and health statistics" and "compile accurate statistics on work injuries and illnesses which shall include all disabling, serious, or significant injuries and illnesses . . ." (29 U.S.C. 673(a)). Section 24 also requires employers to "file such reports with the Secretary as he shall prescribe by regulation" (29 U.S.C. 673(e)). These reports are to be based on "the records made and kept pursuant to section 8(c) of this Act" (29 U.S.C. 673(e)).

Further support for the Secretary's authority to require employers to keep and submit records of work-related illnesses and injuries can be found in the Congressional Findings and Purpose at the beginning of the OSH Act (29 U.S.C. 651). In this section, Congress declares the overarching purpose of the Act to be "to assure so far as possible every working man and woman in the Nation safe and healthful working conditions" (29 U.S.C. 651(b)). One of the ways in which the Act is meant to achieve this goal is "by providing for appropriate reporting procedures . . . [that] will help achieve the objectives of this Act and accurately describe the nature of the occupational safety and health problem" (29 U.S.C. 651(b)(12)).

The OSH Act authorizes the Secretary of Labor to issue two types of occupational safety and health rules: Standards and regulations. Standards, which are authorized by section 6 of the Act, specify remedial measures to be taken to prevent and control employee exposure to identified occupational hazards, while regulations are the means to effectuate other statutory purposes, including the collection and dissemination of records of occupational injuries and illnesses. For example, the OSHA requirements at 29 CFR 1910.95 are a "standard" because they include remedial measures to address the specific and already identified hazard of employee exposure to occupational noise. In contrast, a "regulation" is a purely administrative effort designed to uncover violations of the Act and discover unknown dangers.

Recordkeeping requirements promulgated under the Act are characterized as regulations (*see* 29 U.S.C. 657 (using the term "regulations" to describe recordkeeping requirements)). Also, courts of appeal have held that OSHA recordkeeping rules are regulations and not standards. *See, Workplace Health & Safety Council* v. *Reich,* 56 F.3d 1465, 1468 (D.C. Cir. 1995) (citing *Louisiana Chemical Association* v. *Bingham,* 657 F.2d 777, 781–82 (5th Cir. 1981); *United Steelworkers of America* v. *Auchter,* 763 F.2d 728, 735 (3d Cir. 1985)). Standards aim to correct particular identified workplace hazards, while regulations further the general enforcement and detection purposes of the OSH Act. *Id.*

This final rule does not infringe on employers' Fourth Amendment rights. The Fourth Amendment protects against searches and seizures of private property by the government, but only when a person has a "legitimate expectation of privacy" in the object of the search or seizure (*Rakas* v. *Illinois,* 439 U.S. 128, 143–47 (1978)). There is little or no expectation of privacy in records that are required by the government to be kept and made available (*Free Speech Coalition* v. *Holder,* 729 F.Supp.2d 691, 747, 750–51 (E.D. Pa. 2010) (citing cases); *United States* v. *Miller,* 425 U.S. 435, 442–43 (1976); *cf. Shapiro* v. *United States,* 335 U.S. 1, 33 (1948) (no Fifth Amendment interest in required records)). Accordingly, the Fourth Circuit held, in *McLaughlin* v. *A.B. Chance,* that an employer has little expectation of privacy in the records of occupational injuries and illnesses kept pursuant to OSHA regulations, and must disclose them to the Agency on request (842 F.2d 724, 727–28 (4th Cir. 1988)).

Even if there were an expectation of privacy, the Fourth Amendment prohibits only *unreasonable* intrusions by the government (*Kentucky* v. *King,* 131 S. Ct. 1849, 1856 (2011)). The information submission requirement in this final rule is reasonable. The requirement serves a substantial government interest in the health and safety of workers, has a strong statutory basis, and rests on reasonable, objective criteria for determining which employers must report information to OSHA (*see New York* v. *Burger,* 482 U.S. 691, 702–703 (1987)).

OSHA notes that two courts have held, contrary to *A.B. Chance,* that the Fourth Amendment requires prior judicial review of the reasonableness of an OSHA field inspector's demand for access to injury and illness logs before the Agency could issue a citation for denial of access (*McLaughlin* v. *Kings Island,* 849 F.2d 990 (6th Cir. 1988); *Brock* v. *Emerson Electric Co.,* 834 F.2d 994 (11th Cir. 1987)). Those decisions are inapposite here. The courts based their rulings on a concern that field enforcement staff had unbridled discretion to choose the employers they would inspect and the circumstances in which they would demand access to employer records. The *Emerson Electric* court specifically noted that in situations where "businesses or individuals are required to report particular information to the government on a regular basis[,] a uniform statutory or regulatory reporting requirement [would] satisf[y] the Fourth Amendment concern regarding the potential for arbitrary invasions of privacy" (834 F.2d at 997, fn.2). This final rule, like that hypothetical, establishes general reporting requirements based on objective criteria and does not vest field staff with any discretion. The employers that are required to report data, the information they must report, and the time when they must report it are clearly identified in the text of the rule and in supplemental documents that will be published pursuant to the Paperwork Reduction Act. The final rule is similar in these respects to the existing regulation in § 1904.41 that authorized reporting pursuant to the OSHA Data Initiative and is reasonable under the Fourth Amendment (*see* 62 FR 6434, 6437–38 (Feb. 11, 1997) for a discussion of Fourth Amendment issues in the final rule on Reporting Occupational Injury and Illness Data to OSHA). The existing regulation in § 1904.41 required employers who received OSHA's annual survey form to report the following information to OSHA for the year described on the form: Number of workers the employer employed, the number of hours the employees worked, and the requested information from the records that the employers keep under part 1904.

The Act's various statutory grants of authority that address recordkeeping provide authority for OSHA to prohibit employers from discouraging employee reports of injuries or illnesses. If employers may not discriminate against workers for reporting injuries or illnesses, then discrimination will not occur to deter workers from reporting their injuries and illnesses, and their employers' records and reports may be more "accurate", as required by sections 8 and 24 of the Act. Evidence in the administrative record establishes that some employers engage in practices that discourage injury and illness reporting, and many commenters provided support for OSHA's concern that the electronic submission requirements of this final rule and associated posting of data could provide additional motivation for employers to discourage accurate reporting of injuries and illnesses. Therefore, prohibiting employers from engaging in practices that discourage their employees from reporting injuries or illnesses, including discharging or in any manner discriminating against such employees, is "necessary to carry out" the recordkeeping requirements of the Act (*see* 29 U.S.C. 657(g)(2)).

As noted by many commenters, section 11(c) of the Act already prohibits any person from discharging or otherwise discriminating against any employee because that employee has exercised any right under the Act (29 U.S.C. 660(c)(1)). Under this provision, an employee who believes he or she has been discriminated against may file a complaint with OSHA, and if, after investigation, the Secretary has reasonable cause to believe that section 11(c) has been violated, then the Secretary may file suit against the employer in U.S. District Court seeking "all appropriate relief," including reinstatement and back pay (29 U.S.C. 660(c)(2)). Discriminating against an employee who reports a fatality, injury, or illness is a violation of section 11(c) (*see* 29 CFR 1904.36), so the conduct prohibited by § 1904.35(b)(1)(iv) of the final rule is already proscribed by section 11(c).

The advantage of this new provision (§ 1904.35(b)(1)(iv)) is that it provides OSHA with additional enforcement tools to promote the accuracy and integrity of the injury and illness records employers are required to keep under part 1904. For example, under section 11(c), OSHA may not act against an employer unless an employee files a complaint. Under § 1904.35(b)(1)(iv) of the final rule, OSHA will be able to cite an employer for taking adverse action against an employee for reporting an injury or illness, even if the employee did not file a complaint. Moreover, citations can result in orders requiring employers to abate violations, which may be a more efficient tool to correct employer policies and practices than the remedies authorized under section 11(c), which are often employee-specific.

The fact that section 11(c) already provides a remedy for retaliation does not preclude the Secretary from implementing alternative remedies under the OSH Act. Where retaliation threatens to undermine a program that Congress required the Secretary to adopt, the Secretary may proscribe that retaliation through a regulatory provision unrelated to section 11(c). For example, under the medical removal protection (MRP) provision of the lead standard, employers are required to pay the salaries of workers who cannot work due to high blood lead levels (29 CFR 1910.1025(k); *see United Steelworkers, AFL–CIO* v. *Marshall*, 647 F.2d 1189, 1238 (D.C. Cir. 1980)). And it is well established that the Occupational Safety and Health Review Commission may order employers to pay back pay as abatement for violations of the MRP requirements (*see United Steelworkers, AFL–CIO* v. *St. Joe Resources*, 916 F.2d 294, 299 (5th Cir. 1990); *Dole* v. *East Penn Manufacturing Co.*, 894 F.2d 640, 646 (3d Cir. 1990)). If the reason that an employer decided not to pay MRP benefits was to retaliate for an employee's exercise of a right under the Act, OSHA can still cite the employer and seek the benefits as abatement, because payment of the benefits is important to vindicate the health interests underlying MRP. The mere fact that section 11(c) provides one remedial process does not require that OSHA treat the matter as an 11(c) case (*see St. Joe Resources*, 916 F.2d at 298 (stating that that 11(c) was not an exclusive remedy, because otherwise the remedial purposes of MRP would be undermined)). This would also be the case under the final rule. If employers reduce the accuracy of their injury and illness records by retaliating against employees who report an injury or illness, then OSHA's authority to collect accurate injury and illness records allows OSHA to proscribe such conduct even if the conduct would also be proscribed by section 11(c).

III. Section 1904.41

A. Background

OSHA regulations at 29 CFR part 1904 currently require employers with more than 10 employees in most industries to keep records of work-related injuries and illnesses at their establishments. Employers covered by these rules must prepare an injury and illness report for each case (Form 301), compile a log of these cases (Form 300), and complete and post in the workplace an annual summary of work-related injuries and illnesses (Form 300A).

OSHA currently obtains the injury and illness data entered on the three recordkeeping forms only through onsite inspections, which collect only the data from the individual establishment being inspected, or by inclusion of an establishment in a survey pursuant to the previous 29 CFR 1904.41, *Annual OSHA injury and illness survey of ten or more employers.* From 1997 to 2012, OSHA used the authority in the previous § 1904.41 to collect establishment-specific injury and illness data through the OSHA Data Initiative (ODI). Through the ODI, OSHA requested injury and illness data from approximately 80,000 larger establishments (20 or more employees) in selected industries each year.

The ODI collected only the aggregate data from the 300A annual summary form, and the data were not required to be submitted electronically. OSHA used the information obtained through the ODI to identify and target the most hazardous worksites.

The Department of Labor also collects occupational injury and illness data through the annual Survey of Occupational Injuries and Illnesses (SOII), which is conducted by the Bureau of Labor Statistics (BLS) pursuant to 29 CFR 1904.42, *Requests from the Bureau of Labor Statistics for data.* The SOII provides annual rates and numbers of work-related injuries and illnesses, but BLS is prohibited from releasing establishment-specific data to OSHA or the general public. The final rule does not affect the SOII.

OSHA's recordkeeping regulation currently covers more than 600,000 employers with approximately 1,300,000 establishments. Although the OSH Act gives OSHA the authority to require all employers covered by the Act to keep records of employee injuries and illnesses, two classes of employers are partially-exempted from the recordkeeping requirements in part 1904. First, as provided in § 1904.1, employers with 10 or fewer employees at all times during the previous calendar year are partially exempt from keeping OSHA injury and illness records. Second, as provided in § 1904.2, establishments in certain lower-hazard industries are also partially exempt. Partially-exempt employers are not required to maintain OSHA injury and illness records unless required to do so by OSHA under the previous § 1904.41 or by BLS under § 1904.42.

The records required by part 1904 provide important information to OSHA, as well as to consultants in OSHA's On-Site Consultation Program. However, OSHA enforcement programs currently do not have access to the information in the records required by part 1904 unless the establishment receives an onsite inspection from OSHA or is part of an OSHA annual survey under the previous § 1904.41. At the beginning of an inspection, an OSHA representative reviews the establishment's injury and illness records to help focus the inspection on the safety and health hazards suggested by the records. (OSHA consultants conduct a similar review when an establishment has requested a consultation.) OSHA has used establishment-specific injury and illness information obtained through the ODI to help target the most hazardous worksites.

1. OSHA Data Initiative (ODI)

In the past, OSHA has used the authority in previous § 1904.41 to conduct injury and illness surveys of employers through the ODI. The purpose of the ODI was to collect data on injuries and acute illnesses attributable to work-related activities in private-sector industries from approximately 80,000 establishments in selected high-hazard industries. The Agency used these data to calculate establishment-specific injury/illness rates, and in combination with other data sources, to target enforcement and compliance assistance activities. The ODI consisted of larger establishments (20 or more employees) in the manufacturing industry and in an additional 70 non-manufacturing industries. These are industries with historically high rates of occupational injury and illness. Typically, there were over 180,000 unique establishments subject to participation in the ODI. The ODI was designed so that each eligible establishment received the ODI survey at least once every three-year cycle. In a given year, OSHA would send the ODI survey to approximately 80,000 establishments (1.1 percent of all establishments nationwide), which typically accounted for approximately 700,000 recordable injuries and illnesses (19 percent of injuries and illnesses recorded by employers nationwide).

The ODI survey collected the following data from the Form 300A (annual summary) from each establishment:

- Number of cases (total number of deaths, total number of cases with days away from work, total number of cases with job transfer or restrictions, and total number of other recordable cases);
- Number of days (total number of days away from work and total number of days of job transfer or restriction);
- Injury and illness types (total numbers of injuries, skin disorders, respiratory conditions, poisonings, hearing loss, and all other illnesses);
- Establishment information (name, street address, industry description, SIC or NAICS code, and employment information (annual average number of employees, and total hours worked by all employees));
- Contact information (Company contact name, title, telephone number, and date).

Employers had the option of submitting their data on paper forms or electronically. OSHA then calculated establishment-specific injury and illness rates and used the rates in its Site-Specific Targeting (SST) enforcement program and High Rate Letter outreach program. The Agency also made the establishment-specific data available to the public through its Web site at *http://www.osha.gov/pls/odi/establishment_search.html* and through President Obama's Open Government Initiative at Data.gov (*http://www.data.gov/raw/1461*).

2. BLS Survey of Occupational Injuries and Illnesses (SOII)

The primary purpose of the SOII is to provide annual information on the rates and numbers of work-related non-fatal injuries and illnesses in the United States, and on how these statistics vary by incident, industry, geography, occupation, and other characteristics. The Confidential Information Protection and Statistical Efficiency Act of 2002 (Pub. L. 107–347, Dec. 17, 2002) prohibits BLS from releasing establishment-specific data to the general public or to OSHA.

Each year, BLS collects data from the three recordkeeping forms from a scientifically-selected probability sample of about 230,000 establishments, covering nearly all private-sector industries, as well as state and local government. Employers may submit their data on paper forms or electronically. As stated above, the final rule will not affect the authority for the SOII.

3. OSHA Access to Establishment-Specific Injury and Illness Information

OSHA currently has only a limited ability to obtain part 1904 records, or the establishment-specific injury and illness information included on these forms. Right now, OSHA can access the information in three limited ways.

First, OSHA is able to obtain establishment-specific injury and illness information from employers through workplace inspections. OSHA inspectors examine all records kept under part 1904, including detailed information about specified injuries and illnesses. However, each year, OSHA inspects only a small percentage of all establishments subject to OSHA authority. For example, in Fiscal Year 2014, OSHA and its state partners inspected approximately 1 percent of establishments under OSHA authority (approximately 83,000 inspections, out of approximately 8 million total establishments). As a result, the Agency is not able to compile a comprehensive and timely database of establishment-specific injury/illness information from inspection activities.

Second, OSHA has been able to obtain establishment-specific injury and illness information from employers through the ODI. However, because the ODI collected only summary data from the Form 300A, it did not enable OSHA to identify specific hazards or problems in establishments included in the ODI. In addition, the data were not timely. The injury/illness information in each year's Site-Specific Targeting Program came from the previous year's ODI, which collected injury/illness data from the year before that. As a result, OSHA's site-specific targeting typically was based on injury/illness data that were two or three years old. Additionally, the group of 80,000 establishments in a given year's ODI was a very small fraction of establishments subject to OSHA oversight.

Finally, OSHA is able to obtain limited establishment-specific injury and illness information from employers through 29 CFR 1904.39, *Reporting fatalities, hospitalizations, amputations, and losses of an eye as a result of work-related incidents to OSHA*. OSHA's current regulation requires employers to report work-related fatalities to OSHA within 8 hours of the event. The regulation also requires employers to report work-related in-patient hospitalizations, amputations, and losses of an eye to OSHA within 24 hours of the event. These most severe workplace injuries and illnesses are fortunately rare. OSHA receives fewer than 2,000 establishment-specific reports of fatalities each year. From January 1, 2015, to April 10, 2015, OSHA had received roughly 2,270 reports of single in-patient hospitalizations, 750 reports of amputations, and 4 reports of a loss of an eye. These fatality/severe injury reports do not include the establishment's injury and illness records unless OSHA also collects these records during a subsequent inspection.

Given the above, OSHA currently obtains limited establishment-specific injury and illness information from an establishment in a particular year only if the establishment was inspected or was part of the ODI.

As noted above, OSHA does obtain aggregate information from the injury and illness records collected through the BLS SOII. SOII data have a time lag of almost a year, with data for a given year not available until November of the following year.

d. Benefits of Electronic Data Collection

The main purpose of this section of the final rule is to prevent worker injuries and illnesses through the collection and use of timely, establishment-specific injury and illness data. With the information obtained through this final rule, employers, employees, employee representatives, the government, and researchers may be better able to identify and mitigate workplace hazards and thereby prevent worker injuries and illnesses.

This final rule will support OSHA's statutory directive to "assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources" (29 U.S.C. 651(b)) "by providing for appropriate reporting procedures with respect to occupational safety and health which procedures will help achieve the objectives of this Act and accurately describe the nature of the occupational safety and health problem" (29 U.S.C. 651(b)(12)).

The importance of this rule in preventing worker injuries and illnesses can be understood in the context of workplace safety and health in the United States today. The number of workers injured or made ill on the job remains unacceptably high. According to the SOII, each year employees experience more than 3 million serious (requiring more than first aid) injuries and illnesses at work, and this number is widely recognized to be an undercount of the actual number of occupational injuries and illnesses that occur annually. As described above, OSHA currently has very limited information about the injury/illness risk facing workers in specific establishments, and this final rule increases the agency's ability to target those workplaces where workers are at greatest risk. However, even with improved targeting, OSHA Compliance Safety and Health Officers can inspect only a small proportion of the nation's workplaces each year, and it would take many decades to inspect each covered workplace in the nation even once. As a result, to reduce worker injuries and illnesses, it is of great importance for OSHA to increase its impact on the many thousands of establishments where workers are being injured or made ill but which OSHA does not have the resources to inspect. The final rule may accomplish this, through application of advances made in the field of behavioral economics in understanding and influencing decision-making in order to prevent worker injuries and illnesses. Specifically, the final rule recognizes that public disclosure of data can be a powerful tool in changing behavior. In this case, the objective of disclosure of data on injuries and illnesses is to encourage employers to abate hazards and thereby prevent injuries and illnesses, so that the employer's establishment can be seen by members of the public, including investors and job seekers, as one in which the risk to workers' safety and health is low.

OSHA believes that disclosure of and public access to these data will (using the word commonly used in the behavioral sciences literature) "nudge" some employers to abate hazards and thereby prevent workplace injuries and illnesses, without OSHA having to conduct onsite inspections (*see* the book *Nudge: Improving Decisions About Health, Wealth, and Happiness,* by Richard H. Thaler and Cass R. Sunstein (Penguin Books, 2009)).

The application of behavioral science insights to the prevention injuries and illnesses is consistent with Executive Order 13707 "Using Behavioral Insights to Better Serve the American People," which states, "(a) Executive departments and agencies (agencies) are encouraged to (i) identify policies, programs, and operations where applying behavioral science insights may yield substantial improvements in public welfare, program outcomes, and program cost effectiveness."

This approach is also consistent with other Administration policies, including:

- Executive Order 13563, which states, "Where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, each agency shall identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. These approaches include warnings, appropriate default rules, and disclosure requirements as well as provision of information to the public in a form that is clear and intelligible."
- The September 8, 2011 memorandum from Cass R. Sunstein, Administrator of the Office of Information and Regulatory Affairs, entitled "Informing Consumers through Smart Disclosure", which provides guidance to agencies on how to promote smart disclosure, defined as "the timely release of complex information and data in standardized, machine readable formats in ways that enable consumers to make informed decisions."

In addition, the rule is consistent with President Obama's Open Government Initiative. In his Memorandum on Transparency and Open Government, issued on January 21, 2009, President Obama instructed the Director of the Office of Management and Budget (OMB) to issue an Open Government Directive. On December 8, 2009, OMB issued a Memorandum for the Heads of Executive Departments and Agencies, Open Government Directive, which requires federal agencies to take steps to "expand access to information by making it available online in open formats." The Directive also states that the "presumption shall be in favor of openness (to the extent permitted by law and subject to valid privacy, confidentiality, security, or other restrictions)." In addition, the Directive states that "agencies should proactively use modern technology to disseminate useful information, rather than waiting for specific requests under FOIA."

A requirement for the electronic submission of recordkeeping data will help OSHA encourage employers to prevent worker injuries and illnesses by greatly expanding OSHA's access to the establishment-specific information employers are already required to record under part 1904. As described in the previous section, OSHA currently does not have systematic access to this information. OSHA has limited access to establishment-specific injury and illness information in a particular year. Typically, OSHA only had access if the establishment was inspected or was part of an OSHA injury and illness survey. In addition, the injury and illness data collected through the ODI were summary data only and not timely.

The final rule's provisions requiring regular electronic submission of injury and illness data will allow OSHA to obtain a much larger data set of more timely, establishment-specific information about injuries and illnesses in the workplace. This information will help OSHA use its enforcement and compliance assistance resources more effectively by enabling OSHA to identify the workplaces where workers are at greatest risk.

For example, OSHA will be better able to identify small and medium-sized employers who report high overall injury/illness rates for referral to OSHA's free on-site consultation program. OSHA could also send hazard-specific educational materials to employers who report high rates of injuries or illnesses related to those hazards, or letters notifying employers that their reported injury/illness rates were higher than the industry-wide rates. A recent evaluation by Abt Associates of OSHA's practice of sending referral letters to high-hazard employers identified by OSHA through the ODI confirmed the value of these letters in increasing the number of workplaces requesting a consultation visit (Ex. 1833). OSHA has also found that such high-rate notification letters were associated with a 5 percent decrease in lost workday injuries and illnesses in the following three years. In addition, OSHA will be able to use the information to identify emerging hazards, support an Agency response, and reach out to employers whose workplaces might include those hazards.

The final rule will also allow OSHA to more effectively target its enforcement resources to establishments with high rates or numbers of workplaces injuries and illnesses, and better evaluate its interventions. Prior to 1997, OSHA randomly selected establishments in hazardous industries for inspection. This targeting system was based on aggregated industry data. Relatively safe workplaces in high-rate industries were selected for inspection as well as workplaces that were experiencing high rates of injuries and illnesses. In 1997, OSHA changed its method of targeting general-industry establishments for programmed inspections. The Agency began using establishment-specific injury and illness data collected through the OSHA Data Initiative (ODI) to identify and target for inspection individual establishments that were experiencing high rates of injury and illness. OSHA's Site-Specific Targeting (SST) program has been OSHA's main programmed inspection plan for non-construction workplaces from 1997 through 2014. OSHA intends to use the data collected under this final rule in the same manner for targeting inspections. This rule greatly expands the number and scope of establishments that will provide the Agency with their injury and illness data. As a result, the Agency will be able to focus its inspection resources on a wider population of establishments. The data collection will also enable the Agency to focus its Emphasis Program inspections on establishments with high injury and illness rates, as it did for the National Emphasis Program (NEP) addressing hazards in Nursing Homes (*see* CPL 03–00–016, April 5, 2012).

The new collection will provide establishment-specific injury and illness data for analyses that are not currently possible with the data sets from inspections, the ODI, and reporting of fatalities and severe injuries. For example, OSHA could analyze the data collected under this system to answer the following questions:

1. Within a given industry, what are the characteristics of establishments with the highest injury or illness rates (for example, size or geographic location)?
2. Within a given industry, what are the relationships between an establishment's injury and illness data and data from other agencies or departments, such as the Wage and Hour Division, the Environmental Protection Agency, or the Equal Employment Opportunities Commission?
3. Within a given industry, what are the characteristics of establishments with the lowest injury or illness rates?
4. What are the changes in types and rates of injuries and illnesses in a particular industry over time?

Furthermore, without access to establishment-specific injury and illness data, OSHA has had great difficulty evaluating the effectiveness of its enforcement and compliance assistance activities. Having these data will enable OSHA to conduct rigorous evaluations of different types of programs, initiatives, and interventions in different industries and geographic areas, enabling the agency to become more effective and efficient. For example, OSHA believes that some employers who have not been inspected, but who learn about the results (include monetary penalties) of certain OSHA's inspections in the same industry or geographic area, may voluntarily abate hazards out of concern that they will be the target of a future inspection. Access to these data will allow OSHA to compare injuries and illnesses at non-inspected establishments in the same industry or geographic areas as the inspected ones.

Publication of worker injury and illness data will encourage employers to prevent injuries and illnesses among their employees through several mechanisms:

First, the online posting of establishment-specific injury and illness information will encourage employers to improve workplace safety and health to support their reputations as good places to work or do business with. Many corporations now voluntarily report their worker injury and illness rates in annual "Sustainability Reports", in order to show investors, stakeholders, and the public that they are committed to positive social values, including workplace safety and health. Public access to these data will help address a well-known information problem present in all voluntary reporting initiatives: Voluntary disclosure tends to lead those with the worst records to underreport outcomes. By requiring complete, accurate reporting, interested parties will be able to gauge the full range of injury and illness outcomes.

Second, these data will be useful to employers who want to use benchmarking to improve their own safety and health performance. Under OSHA's current recordkeeping regulation, employers have access only to their own data, aggregate injury/illness data in the SOII, historic summary data from establishments in the ODI, and other severe injury/illness event reports. Using data collected under this final rule, employers can compare injury and illness rates at their establishments to those at comparable establishments, and set workplace safety/health goals benchmarked to the establishments they consider most comparable.

Third, online availability of establishment-specific injury and illness information will allow employees to compare their own workplaces to the safest workplaces in their industries. Further, while the current access provisions of the part 1904 regulation provide employees the right to access the information on the part 1904 recordkeeping forms, evidence shows that few employees exercise this right. During 2,836 inspections conducted by OSHA between 1996 and 2011 to assess the injury and illness recordkeeping practices of employers, 2,599 of the recordkeepers interviewed (92 percent) indicated that employees never requested access to the records required under part 1904. OSHA believes that employees in establishments with 250 or more employees will access and make use of the data more frequently when the case-specific information is available without having to request the information from their employers. Uninhibited access to the information will allow employees in these establishments to better identify hazards within their own workplace and to take actions to have the hazards abated. In addition, if employees preferentially choose employment at the safest workplaces in their industries, then employers may take steps to improve workplace safety and health (preventing injuries and illnesses from occurring) in order to attract and retain employees.

Fourth, access to these data will improve the workings of the labor market by providing more complete information to job seekers, and, as a result, encourage employers to abate hazards in order to attract more desirable employees. Potential employees currently have access only to the limited injury/illness information currently available to the public, as discussed above. Injury and illness data for the vast majority of establishments are not publicly available. Using data newly accessible under this final rule, potential employees could examine the injury and illness records of establishments where they are interested in working, to help them make a more informed decision about a future place of employment. This would also encourage employers with more hazardous workplaces in a given industry to make improvements in workplace safety and health to prevent injuries and illnesses from occurring, because potential employees, especially the ones whose skills are most in demand, might be reluctant to work at more hazardous establishments. In addition, this would help address a problem of information asymmetry in the labor market, where the businesses with the greatest problems have the lowest incentive to self-disclose.

Fifth, access to data will permit investors to identify investment opportunities in firms with low injury and illness rates. If investors believe that firms that have low rates outperform firms with higher rates, presumably because the low-rate firms are better managed, and they preferentially invest in firms with low rates, then employers may take steps to improve workplace safety and health and prevent injuries and illnesses from occurring in order to attract investment.

Sixth, using data collected under this final rule, members of the public will be able to make more informed decisions about current and potential places with which to conduct business. For example, potential customers might choose to patronize only the businesses in a given industry with the lowest injury/illness rates. This is not possible at present because, as noted above, the general public has access only to very limited injury and illness data. Such decisions by customers would also encourage establishments with higher injury/illness rates in a given industry to improve workplace safety in order to become more attractive to potential customers.

Finally, in large construction contracts, particularly those involving work contracted for by state and local governments, preference is often given to subcontractors with lower injury and illness rates. In some cases, employers with rates above a certain level are not eligible for the contract work. Public disclosure of employers' injury and illness rates will be to enable corporate and individual customers to consider these rates in the selection of vendors and contractors. These data will also be useful to people who believe that low injury rates are correlated with high production quality, and who therefore prefer to purchase products made by manufacturers with low injury rates (Paul S. Adler, 1997) (Ex. 1832).

Disclosure of and access to injury and illness data have the potential to improve research on the distribution and determinants of workplace injuries and illnesses, and therefore to prevent workplace injuries and illnesses from occurring. Like the general public, researchers currently have access only to the limited injury/illness data described above. Using data collected under this final rule, researchers might identify previously unrecognized patterns of injuries and illnesses across establishments where workers are exposed to similar hazards. Such research would be especially useful in identifying hazards that result in a small number of injuries or illnesses in each establishment but a large number overall, due to a wide distribution of those hazards in a particular area, industry, or establishment type. Data made available under this final rule may also allow researchers to identify patterns of injuries or illnesses that are masked by the aggregation of injury/illness data in the SOII.

The availability of establishment-specific injury and illness data will also be of great use to county, state and territorial Departments of Health and other public institutions charged with injury and illness surveillance. In particular, aggregation of establishment-specific injury and illness reports and rates from similar establishments will facilitate identification of newly-emerging hazards that would not easily be identified without linkage to specific industries or occupations. There are currently no comparable data sets available, and these public health surveillance programs must primarily rely on reporting of cases seen by medical practitioners, any one of whom would rarely see enough cases to identify an occupational etiology.

Workplace safety and health professionals might use data published under this final rule to identify establishments whose injury/illness records suggest that the establishments would benefit from their services. In general, online access to this large database of injury and illness information will support the development of innovative ideas for improving workplace safety and health, and will allow everyone with a stake in workplace safety and health to participate in improving occupational safety and health.

Furthermore, because the data will be publicly available, industries, trade associations, unions, and other groups representing employers and workers will be able to evaluate the effectiveness of privately-initiated injury and illness prevention initiatives that affect groups of establishments. In addition, linking these data with data residing in other administrative data sets will enable researchers to conduct rigorous studies that will increase our understanding of injury causation, prevention, and consequences. For example, by combining these data with data collected in the Annual Survey of Manufactures (conducted by the United States Census Bureau), it will be possible to examine the impact of a range of management practices on injury and illness rates, as well as the impact of injury and illness rates on the financial status of employers.

Finally, public access to these data will enable developers of software and smartphone applications to develop tools that facilitate use of these data by employers, workers, researchers, consumers and others. Examples of this in other areas is the use of OSHA and Wage and Hour Division violation information in the "Eat/Shop/Sleep" smartphone application and, in public transit, the wide-scale private development of applications for real-time information on bus and subway arrivals using public information.

This final rule will also improve the accuracy of the recorded data. Section 1904.32 already requires company executives subject to part 1904 requirements to certify that they have examined the annual summary (Form 300A) and that they reasonably believe, based on their knowledge of the process by which the information was recorded, that the annual summary is correct and complete. OSHA recognizes that most employers are diligent in complying with this requirement. However, a minority of employers is less diligent; in recent years, one-third or more of violations of § 1904.32, and up to one-tenth of all recordkeeping (part 1904) violations, have involved this certification requirement. It is OSHA's belief that, if this minority of employers knows that their data must be submitted to the Agency and may also be examined by members of the public, then they will pay more attention to the requirements of part 1904, which could lead both to improvements in the quality and accuracy of the information and to better compliance with § 1904.32.

Finally, the National Advisory Committee on Occupational Safety and Health (NACOSH), composed of representatives of employers, workers, and the public, has expressed its support of the efforts of OSHA in consultation with NIOSH to modernize the system for collection of injury and illness data to assure that it is timely, complete, and accurate, as well as both accessible and useful to employers, employees, responsible government agencies, and members of the public.

e. Publication of Electronic Data

As discussed above, OSHA intends to make the data it collects public. As discussed below, the publication of specific data elements will in part be restricted by applicable federal law, including provisions under the Freedom of Information Act (FOIA), as well as specific provisions within part 1904. OSHA will make the following data from the various forms available in a searchable online database:

Form 300A (Annual Summary Form)—All collected data fields will be made available. In the past, OSHA has collected these data under the ODI and during OSHA workplace inspections and released them in response to FOIA requests. The annual summary form is also posted at workplaces under § 1904.32(a)(4) and (b)(5). OSHA currently posts establishment-specific injury and illness rates calculated from the data collected through the ODI on OSHA's public Web site at *http://www.osha.gov/pls/odi/establishment_search.html*. The 300A annual summary does not contain any personally-identifiable information.

Form 300 (the Log)—All collected data fields on the 300 Log will generally be made available on the Web site. Employee names will not be collected. OSHA occasionally collects these data during inspections as part of the enforcement case file. OSHA generally releases these data in response to FOIA requests. Also, § 1904.29(b)(10) prohibits release of employees' names and personal identifiers contained in the forms to individuals other than the government, employees, former employees, and authorized representatives. OSHA does not currently conduct a systematic collection of the information on the 300 Log.

Form 301 (Incident Report)—All collected data fields on the right-hand side of the form (Fields 10 through 18) will generally be made available. The Agency currently occasionally collects the form for enforcement case files. OSHA generally releases these data in response to FOIA requests. Section 1904.35(b)(2)(v)(B) prohibits employers from releasing the information in Fields 1 through 9 (the left-hand side of the form) to individuals other than the employee or former employee who suffered the injury or illness and his or her personal representatives. Similarly, OSHA will not publish establishment-specific data from the left side of Form 301. OSHA does not release data from Fields 1 through 9 in response to FOIA requests. The Agency does not currently conduct a systematic collection of the information on the Form 301. However, the Agency does review the entire Form 301 during some workplace inspections and occasionally collects the form for inclusion in the enforcement case file. Note that OSHA will not collect or publish Field 1 (employee name), Field 2 (employee address), Field 6 (name of treating physician or health care provider), or Field 7 (name and address of non-workplace treating facility).

While OSHA intends to make the information described above generally available, the Agency also wishes to emphasize that it does not intend to release personally identifiable information included on the forms. For example, in some cases, information entered in Column F (Describe injury or illness, parts of body affected, and object/substance that directly injured or made person ill) of the 300 Log contains personally-identifiable information, such as an employee's name or Social Security Number. As a result, OSHA plans to review the information submitted by employers for personally-identifiable information. As part of this review, the Agency will use software that will search for and de-identify personally identifiable information before OSHA posts the data.

It should also be noted that other federal agencies post establishment-specific health and safety data with personal identifiers, including names. For example, the Mine Safety and Health Administration (MSHA) publishes information gathered during the agency's investigations of fatal accidents. MSHA's Preliminary Report of Accident, Form 7000–13, provides information on fatal accidents including the employee's name, age, and a description of the accident. MSHA also publishes the written Accident Investigation Report, which details the nature and causes of the accident and includes the names of other employees involved in the fatal incident.

The Federal Railroad Administration (FRA) posts Accident Investigation Reports filed by railroad carriers under 49 U.S.C. 20901 or made by the Secretary of Transportation under 49 U.S.C. 20902; in the case of highway-rail grade crossing incidents, these reports include personally identifiable information (age and gender of the person(s) in the struck vehicle).

Finally, the Federal Aviation Administration (FAA) posts National Transportation Safety Board (NTSB) reports about aviation accidents. These reports include personally identifiable information about employees, including job history and medical information.

B. The Proposed Rule

The proposed rule would have amended OSHA's existing recordkeeping regulation at § 1904.41 to add three new electronic reporting requirements. First, OSHA would have required establishments that are required to keep injury and illness records under part 1904, and had 250 or more employees in the previous calendar year, to electronically submit information from these records to OSHA or OSHA's designee, on a quarterly basis (*proposed § 1904.41(a)(1)—Quarterly electronic submission of part 1904 records by establishments with 250 or more employees*).

Second, OSHA would have required establishments that are required to keep injury and illness records under part 1904, had 20 or more employees in the previous calendar year, and are in certain designated industries, to electronically submit the information from the OSHA annual summary form (Form 300A) to OSHA or OSHA's designee, on an annual basis (*proposed § 1904.41(a)(2)—Annual electronic submission of OSHA annual summary form (Form 300A) by establishments with 20 or more employees in designated industries*). This second submission requirement would have replaced OSHA's annual illness and injury survey, authorized by the then-current version of 29 CFR 1904.41.

Third, OSHA would have required all employers who receive notification from OSHA to electronically submit specified information from their part 1904 injury and illness records to OSHA or OSHA's designee (*proposed § 1904.41(a)(3)—Electronic submission of part 1904 records upon notification*).

As previously discussed, in addition to the new requirements for electronic submission of part 1904 data, the preamble to the proposed rule stated that OSHA intended to make the collected data public in order to make the data useful to employers, employees, and the public in dealing with safety and health issues. OSHA also stated in the preamble to the proposed rule that the publication of specific data elements would have been restricted in part by provisions under the Freedom of Information Act (FOIA) and the Privacy Act, as well as specific provisions within part 1904. OSHA proposed to make the following data from the various forms available in a searchable online database:

Form 300A—All fields could have been made available. Form 300A does not contain any personally identifiable information.

Form 300 (the Log)—All fields could have been made available except for Column B (the employee's name).

Form 301 (Incident Report)—All fields on the right-hand side of the form (Fields 10 through 18) could typically have been made available.

C. Comments on the Proposed Rule

There were many comments supporting the proposed rule. Many commenters commented that the collection of recordkeeping data would allow OSHA to improve workplace safety and health and prevent injuries and illnesses. Other commenters commented that publication of information provided by the electronic submission of recordkeeping data from covered establishments would allow employers, employees, researchers, unions, safety and health professionals, and the public to improve workplace safety and health. There were also comments that the proposed rule was consistent with the actions of other federal and state agencies, which already require the submission of health and safety data.

However, many commenters also raised potential concerns about the proposed rule. Some commenters expressed concerns about the implications of the publication of safety and health data for employee privacy. There were also comments about the implications of the proposed rule for employer privacy, especially with regard to confidential commercial information. Other commenters commented that OSHA underestimated the cost to businesses of implementing the proposed rule, especially the proposed requirement that would have required large establishments to submit data on a quarterly basis. In addition, some commenters commented that the data provided to OSHA and to the public as a result of this rule would not be beneficial.

OSHA addresses all of the issues raised by commenters below.

Alternatives Included in the Proposed Rule

In the preamble to the proposed rule, in addition to providing proposed regulatory text, OSHA stated that it was considering several alternatives. [78 FR 67263–65270]. OSHA requested comment on the following regulatory alternatives.

Alternative A—Monthly Submission Under Proposed § 1904.41(a)(1)

In Alternative A, OSHA considered requiring monthly submission instead of quarterly submission from establishments with 250 or more employees.

However, almost all commenters opposed this alternative. Several commenters expressed concerns about the burdens of monthly submission on employers (Exs. 1211, 1112). Several commenters also expressed concerns about the effects of monthly submission on data quality (Exs. 1211, 1385, 1397). Other commenters commented that monthly reporting would not provide much, if any, benefit over quarterly reporting (Exs. 1384, 1391).

Ashok Chandran provided the only comment in support of this alternative. He commented that "[m]ore frequent reporting will actually prevent distortion, as fewer reports would increase the chance of a limited sample misrepresenting the conditions of an establishment. So long as OSHA does not use reports in isolation to trigger investigation, this risk is low" (Ex. 1393).

OSHA agrees with commenters who stated that monthly reporting would increase the burden on employers and could result in the submission of less accurate recordkeeping data. Given the potential extra burden without an added benefit, OSHA has decided not to adopt Alternative A from the proposed rule. As explained below, the final rule requires annual electronic submission of part 1904 records by establishments with 250 or more employees.

Alternative B—Annual Submission Under Proposed § 1904.41(a)(1)

In Alternative B, OSHA considered requiring annual submission for establishments with 250 or more employees instead of quarterly submission.

Most commenters supported Alternative B, on grounds that annual reporting would provide better-quality, more useful data and would be less burdensome for both employers and OSHA.

Commenters provided various reasons to support the idea that annual reporting would provide better-quality data. First, some commenters commented that one quarter is too short a period of time to generate meaningful data (Exs. 0258, 1338, 1385, 1399, 1413). For example, the American Meat Institute commented that "breaking the data into quarterly 'bites' will produce numbers with no comparative value . . . In fact, it is more likely to generate misleading, incorrect information because injury and illness incidents typically occur on a much more random basis than is reflected in what would amount to three-month 'snapshots' " (Ex. 0258).

Second, some commenters commented that quarterly reporting was more likely to lead to underreporting. The Allied Universal Corporation commented that "[w]ith quarterly reporting, employers are unlikely to record close cases because, in many instances, striking them later may be impossible as the information has already been reported and posted publicly by OSHA. Rather than assume such an additional burden, employers will likely err on the side of not recording those incidents where in doubt" (Ex. 1192). The American Chemistry Council, the Association of Energy Service Companies (AESC), and the International Association of Amusement Parks and Attractions (IAAPA) provided similar comments (Exs. 1092, 1323, 1427).

Third, several commenters commented that quarterly reporting would not provide enough time for employers to complete cases and catch data mistakes (Exs. 0035, 0247, 1110, 1206, 1214, 1339, 1379, 1385, 1389, 1399, 1405, 1406). For example, the Glass Packaging Institute commented that "[t]he data is not static but will be a moving data set and consequently of little value for evaluation or decisions. Cases are added, deleted, change with time as information and cases and/or treatment improve or worsen" (Ex. 1405).

ORCHSE Strategies, LLC commented that "[employers] also review the data at the end of the year to insure its accuracy before it is included in company reports or submitted to OSHA or to BLS. They check on outstanding cases; track day-counts for cases involving restricted work activity, job transfer, and days away from work; check on ongoing employee job limitations; prepare estimates of future days that will be lost or restricted (beyond the end of the year) etc." (Ex. 1339). In addition, the American Petroleum Institute commented that "29 CFR 1904.32 requires annual certification of the 300 Forms and the quarterly submittals would not be certified; thus, [OSHA] would be relying on potentially inaccurate information" (Ex. 1214).

As for the usefulness of data provided by quarterly reporting, many commenters stated that there is no evidence of benefits of quarterly reporting over annual reporting for worker safety and health (Exs. 0156, 0258, 1110, 1126, 1206, 1210, 1221, 1225, 1322, 1339, 1406, 1412). For example, the North American Insulation Manufacturers Association (NAIMA) commented that "OSHA has failed to demonstrate that the increased frequency of reporting will improve worker safety, especially by imposing a four-fold burden increase on both employer and agency personnel for quarterly rather than annual reporting. Indeed, it cannot document such a result because there is no connection between quarterly reporting and improved worker safety" (Ex. 1221). NAIMA also commented that "the delay for OSHA to scrub the data [of PII before publication] will likely obviate any perceived 'timeliness' benefit OSHA might make in attempting to justify quarterly rather than annual data submission" (Ex. 1221). The Fertilizer Institute (TFI) and the Agricultural Retailers Association (ARA) provided similar comments (Ex. 1412).

OSHA also received comments that quarterly reporting would be overly burdensome for employers (Exs. 0247, 1112, 1126, 1206, 1210, 1214, 1221, 1332, 1338, 1339, 1379, 1389, 1390, 1405). For example, ORCHSE Strategies, LLC commented that "[v]erification is often an iterative process that involves back-and-forth between the corporate safety department and the site, with involvement of medical practitioners, the injured or ill employee, supervisors and others. Shifting from a single data submission to four data submissions per year would add substantially to the already significant cost and burden for these employers (at least by a factor of four). It would also complicate the process; employers would have to create estimated day counts for cases that are not closed at the time of each reporting and then correct them when the cases are finally resolved" (Ex. 1339).

The Association of Union Constructors (TAUC) commented that "[w]ith a proposed quarterly reporting frequency, often cases in the construction industry may not be resolved quickly and there is no method of recourse if the employer is found not at fault once the raw data is public . . . A lag in the period of time between updating and posting of injury/illness data could impose punitive consequences to the contractor if the public or customers are reviewing their data in real time" (Ex. 1389). In addition, the Environmental, Health & Safety Communications Panel (EHSCP) commented that quarterly reporting would be a burden for safety and health professionals and "strongly recommend[ed] that nothing more frequent than an annual submission be considered so as to minimize the time that safety and health professionals are required to devote to paperwork and data review rather than on proactive safety efforts" (Ex. 1331).

Commenters commented particularly about the resources needed for OSHA to remove PII from the collected data before publishing the data. For example, the North American Insulation Manufacturers Association (NAIMA) commented that "OSHA will tax its own resources to process, review, and scrub the data four times per year. This data will contain sensitive personal information, and OSHA will need to edit the data before making it public. To do this on a quarterly basis will be time consuming and resource intensive" (Ex. 1221). The Phylmar Regulatory Roundtable (PRR) questioned whether OSHA has the capacity to analyze quarterly data, commenting that "annual data submissions from 580,000 employers strike PRR as a large volume of data for OSHA to analyze. Multiplying that number by quarterly submissions has more potential for detriment than benefit" (Ex. 1110).

However, several commenters opposed Alternative B on grounds that quarterly data would be more useful and would not increase the burden on employers (Exs. 1211, 1381, 1384). The International Brotherhood of Teamsters commented that "[q]uarterly submissions will help identify emerging trends or serious incidents within a much more rapid timeframe than annual reporting, and allow for rapid intervention to stop such trends or respond to such incidents before they continue" (Ex. 1381). Similarly, the International Union (UAW) commented that "annual reporting would make it impossible to track seasonal variations in the type or rate of injuries and illnesses" (Ex. 1384).

In response, OSHA agrees with commenters who stated that annual reporting would lessen the burden on employers. OSHA believes that companies' review of the data at the end of the year will help to improve the accuracy of the submitted data, because employers are already required to certify their records at the end of the calendar year under current part 1904. In addition, OSHA agrees that annual reporting will provide more meaningful data, as well as higher-quality data, because employers will have more time to update and revise the data before reporting to OSHA. Finally, OSHA agrees with the commenters who stated that annual reporting would lessen the burden on OSHA, by reducing both the total volume of data and the amount of personally identifiable information to remove before publication. Therefore, unlike the proposed rule, which would have required quarterly submission by establishments with 250 or more employees, § 1904.41(a)(1) of the final rule requires annual electronic submission of part 1904 records by establishments with 250 or more employees.

Alternative C—One Year Phase-in of Electronic Reporting Under Proposed § 1904.41(a)(1)

In Alternative C, OSHA considered a phase-in of the electronic reporting requirement, under which establishments with 250 or more employees would have had the option of submitting data on paper forms for the first year the rule would have been in effect.

Several commenters opposed Alternative C on grounds that large companies affected by this rule should be able to electronically submit data in the first year, especially the Form 300 (Log) and 300A (annual summary). These commenters explained that submission of data in paper form would delay the processing and publication of the data (Exs. 1211, 1345, 1350, 1381, 1384, 1387, 1424). The International Brotherhood of Teamsters commented that "these companies are certainly large enough to handle the responsibility, and will receive the analytic benefits such a reporting system provides" (Ex. 1381). Other commenters stated that there should not be a phase-in of the electronic submission requirement because OSHA does not have the resources to process thousands of submitted paper forms (Exs. 1395, 1211).

However, other commenters supported Alternative C to provide time for employers and OSHA to come up with methods for protecting worker confidentiality. The International Union (UAW) commented that "OSHA may find it useful to have a phase-in period for submission of 301 reports by these employers to allow time for OSHA to come up with a method for scrubbing data to ensure worker confidentiality" (Ex. 1384). The United Food & Commercial Workers International

Union (UFCW) and the Services Employees International Union (SEIU) provided similar comments (Exs. 1345, 1387). FedEx Corporation commented that "if employers are required to collect Form 301 data, then given that the reporting of detailed injury and illness data is a wholly novel recordkeeping requirement which will require an investment of significant time and resources for implementation, FedEx supports a phase-in period of at *least* one-year" (Ex. 1338).

In response, OSHA agrees with commenters who stated that larger companies (those with 250 or more employees) have the resources to electronically submit injury and illness data to OSHA in the first year. According to commenters, in many cases, larger companies already keep OSHA injury and illness records electronically, so a requirement to submit such records electronically is not unduly burdensome (Exs. 1103, 1188, 1209, 1211, 1387, 1393, 1424) (*see* also Section VI Final Economic Analysis and Regulatory Flexibility Analysis).

OSHA also agrees with commenters who stated that the Agency does not have the resources to handle the large volumes of non-electronic data that Alternative C would have produced. Based on OSHA's experience with paper submissions to the ODI, the Agency estimates that processing a paper submission might take 2 minutes for the data from Form 300A and 1 minute for processing the actual paper form. In addition, based on BLS's experience with paper submissions to the SOII, the Agency estimates that processing each reported case in a paper submission might take 2 minutes. OSHA estimates that 33,000 establishments will be subject to final § 1904.41(a)(1), accounting for 713,000 reported cases. In addition, roughly 30 percent of the establishments in the ODI submitted their data on paper. Based on these estimates (3 minutes per paper submission; 2 minutes per case; 30 percent of establishments submit on paper; 33,000 establishments; 713,000 cases), OSHA estimates that the one-year paper submission phase-in option in Alternative C would account for 495 hours for the Form 300A and 7,130 hours for the cases, for a total of 7,625 hours, or almost four full-time employees at 2,000 hours per full-time employee. Under a more optimistic scenario assuming 10 percent of establishments submitting on paper, the one-year paper submission phase-in option in Alternative C would account for 165 hours for the Form 300A and 2,377 hours for the cases, for a total of 2,542 hours, or more than one full-time employee. Under either scenario, OSHA would be unable to make timely use of the data.

Additionally, with respect to commenters who stated that a phase-in would provide more time for employers and OSHA to develop methods to protect employee confidentiality, OSHA notes that a requirement that only provides for electronic submission of data will help the Agency search for and redact confidential information. As noted elsewhere in this preamble, OSHA will use existing software to remove personally identifiable information before posting data on the publicly-accessible Web site. Also as noted above, the proposed rule would have required establishments with 250 or more employees to electronically submit data on a quarterly basis, whereas § 1904.41(a)(1) of the final rule requires annual submission. This change will provide large employers with additional time to prepare for the first electronic submission of recordkeeping data on March 2, 2017. Accordingly, the final rule requires electronic submission of part 1904 records by establishments with 250 or more employees, without a phase-in period for paper submission.

Alternative D—Three Year Phase-in of Electronic Reporting Under Proposed § 1904.41(a)(2)

In Alternative D, OSHA considered a phase-in of the electronic reporting requirement, under which establishments with 20 or more employees in designated industries would have had the option of submitting data on paper forms for the first three years this rule would have been in effect.

All of the commenters who specifically commented on Alternative D supported a phased-in electronic submission requirement to allow smaller companies to adjust to electronic reporting. Different commenters supported a phase-in period of different lengths—one, two, or three years, or an unspecified "reasonable" period of time (Exs. 1206, 1211, 1338, 1350, 1353, 1384, 1387, 1424).

OSHA also received a comment from the American College of Environmental Medicine (ACEM) stating that OSHA should provide a phase-in for "employers who do not have access to the Internet pending full distribution of Internet services throughout the Nation" (Ex. 1327). The Dow Chemical Company commented that "a phase-in period should be provided for: At least one year after OSHA's web portal is created, debugged, tested and operational. However, a phase-in should consist of a period without a paper reporting requirement, so companies can deploy their resources toward developing the systems and information that will be necessary in order to report electronically" (Ex. 1189). The National Ready Mixed Concrete Association (NRMCA), International Association of Industrial Accident Boards and Commissions (IAIBC), and Bray International made similar comments (Exs. 0210, 1104, 1401).

OSHA agrees with the comments for Alternative C, above, that OSHA does not have the resources to handle the large volumes of non-electronic data that Alternative D would produce. As above, based on OSHA's experience with paper submissions to the ODI, the Agency estimates that processing a paper submission might take 2 minutes for the data from Form 300A and 1 minute for processing the actual paper. OSHA estimates that 430,000 establishments will be subject to final § 1904.41(a)(2). In addition, OSHA estimated that roughly 30 percent of the establishments in the ODI submitted their data on paper. Based on these estimates (3 minutes per paper submission; 30 percent of establishments submit on paper; 430,000 establishments), OSHA estimates that the three-year paper submission phase-in option in Alternative D would account for 6,450 hours per year for three years, or 19,350 hours total. Under a more optimistic scenario assuming 10 percent of establishments submitting on paper, the three-year paper submission phase-in option in Alternative D would account for 2,150 hours per year for three years, or 6,450 hours total. Under either scenario, OSHA would be unable to make timely use of the data.

As with Alternative C, immediate electronic reporting will make the data available to employers, the public, and OSHA in a timelier manner, because OSHA will not have to take the time to convert paper entries into electronic format. Also, an electronic format will make it much easier and faster for OSHA to prepare the data for publication. Therefore, the final rule requires annual electronic submission of the OSHA Form 300A by establishments with 20 or more employees, but fewer than 250 employees, in designated industries, without a phase-in period for paper submission.

With respect to commenters' concern about Internet availability, OSHA believes that establishments with 20 or more employees are highly likely to have access to the Internet, and the burden of electronic reporting is low.

Alternative E—Widen the Scope of Establishments Required To Report Under Proposed § 1904.41(a)(1)

In Alternative E, OSHA considered widening the scope of establishments required to report under this proposed section of the rule from establishments with 250 or more employees to establishments with 100 or more employees.

In support of Alternative E, commenters stated that increasing the number of establishments required to report would in turn increase public access to establishment-specific injury and illness data (Exs. 1211, 1395). There were also comments that lowering the size criterion to 100 employees would pose little burden on medium-sized facilities, because establishments of that size often already have standardized recordkeeping (Exs. 1211, 1358).

However, there were also comments opposing Alternative E due to employer burden and volume of data. For employer burden, the National Automobile Dealers Association (NADA) commented that "[u]nder no circumstances should the proposed threshold for quarterly reporting be expanded to include establishments with 100 or more employees. As noted above, the proposed mandate is unjustified at the proposed 250-employee threshold. Any expansion would just exacerbate the burden for a much larger universe of employers with no commensurate benefit" (Ex. 1392).

For volume of data, several commenters commented that OSHA should assess the effect of lowering the size criterion to 200 employees and that 250 employees should be the maximum size criterion. For example, the AFL–CIO commented that "the 250 employee cut-off should be the maximum cut-off for such reporting. We encourage the agency to examine the effect of lowering the establishment threshold to 200 employees to determine and assess the additional information that would be captured by such as change, particularly information from higher hazard industries that are of greater concern" (Ex. 1350). The International Brotherhood of Teamsters and the International Union, United Automobile, Aerospace and Agriculture Implement Workers of America (UAW) provided similar comments (Ex. 1381, 1384). The Service Employees International Union (SEIU) commented that "we believe 250 employees should be the maximum. We would support a phased in lowering of this number over several years to 100 employees as electronic reporting becomes even more routine and as the workforce continues to fragment into smaller units, as many expect" (Ex. 1387).

OSHA agrees with commenters who stated that reducing the size criterion to 100 would increase the burden on employers with diminishing benefit. The number of establishments that would be required to report under this proposed section under Alternative E would increase from 34,000 to 120,000. This alternative would also increase the number of injury and illness cases with incident report (OSHA Form 301) and Log (OSHA Form 300) data from 720,000 to 1,170,000. Therefore, like the proposed rule, the final rule requires electronic submission of all three recordkeeping forms by establishments with 250 or more employees.

Alternative F—Narrow the Scope of Establishments Required To Report Under Proposed § 1904.41(a)(1)

In Alternative F, OSHA considered narrowing the scope of establishments required to report under this section of the rule from establishments with 250 or more employees to establishments with 500 or more employees.

Several commenters supported Alternative F, on grounds that it would lower the burden of the rule. The National Council of Farmer Cooperatives (NCFC) commented that "[w]e encourage OSHA to broaden the scope of establishments that fall under this section from 250 to 500 employees, reducing the number of establishments burdened by quarterly reporting requirements" (Ex. 1353). FedEx Corporation provided a similar comment (Ex. 1338), adding that raising the size criterion to 500 employees would still provide OSHA with a "statistically significant pool of injury and illness data" (Ex. 1338).

However, Logan Gowdey commented that raising the size criterion from 250 employees to 500 employees would reduce "establishments covered from 38,000 to 13,800 and reports from 890,000 to 590,000. While the number of reports does not decrease that much, the number of establishments decreases dramatically, which will limit the importance of the data collected" (Ex. 1211).

OSHA agrees that Alternative F's great reduction in the number of establishments and employees covered by § 1904.41(a)(1) would reduce the utility of the data. Under Alternative F, the number of establishments that would be required to report under § 1904.41(a)(1) would decrease from 34,000 to 12,000. This alternative would also decrease the number of injury and illness cases with incident report (OSHA Form 301) and Log (OSHA Form 300) data from 720,000 to 495,000. Therefore, like the proposed rule, the final rule requires electronic submission of part 1904 records by establishments with 250 or more employees.

Alternative G—Three-Step Process of Implementing the Reporting Requirements Under Proposed § 1904.41(a)(1) and (2)

In Alternative G, OSHA considered a three-step process of implementing the reporting requirements under the proposed § 1904.41(a)(1) and (2).

For this proposed alternative, high-hazard industry groups (four-digit NAICS) would have been defined as having rates of injuries and illnesses involving days away from work, restricted work activity, or job transfer (DART) that are greater than 2.0. High-hazard industry sectors (two-digit NAICS) would have been defined as agriculture, forestry, fishing and hunting; utilities; construction; manufacturing; and wholesale trade.

In the first step of this three-step implementation process, reporting would have been required only from the establishments in proposed § 1904.41(a)(1) and (2) that are in high-hazard industry groups (four-digit NAICS with a DART rate greater than or equal to 2.0).

In the second step of the three-step implementation process, OSHA would have conducted an analysis, after a specified period of time, to assess the effectiveness, adequacy, and burden of the reporting requirements in the first step. The results of this analysis would then have guided OSHA's next actions.

The third step of the three-step implementation process would therefore have depended on the results of OSHA's analysis.

The only comment in support of Alternative G was from Southern Company, which commented that "[a] smaller pilot group of employers in historically the highest incident rates will allow OSHA to determine if its system works as intended" (Ex. 1413). Other commenters opposed Alternative G for various reasons, including scope, effectiveness, and implementation (Exs. 1211, 1350, 1381, 1384, 1387). For example, the International Brotherhood of Teamsters commented that "[w]e support the proposed approach rather than this confusing 3-step alternative. The current approach is a better means for capturing higher hazard industries and establishments. The rule already has different requirements for different size employers. OSHA should keep this rule as simple as possible. Changing criteria through phase in would only complicate the implementation of the rule" (Ex. 1381).

In response, OSHA agrees that Alternative G would reduce the effectiveness of the rule, increase uncertainty for employers, and make implementation more difficult. Therefore, like the proposed rule, the final rule requires electronic submission of part 1904 records by establishments with 250 or more employees, and annual electronic submission of the Form 300A annual summary by establishments with 20 to 249 employees in designated industries, without the multi-step implementation process in this alternative.

Alternative H—Narrow the Scope of the Reporting Requirements Under Proposed § 1904.41(a)(1) and (2)

The proposed § 1904.41(a)(1) would have applied to all establishments with 250 or more employees in all industries covered by the recordkeeping regulation. The proposed § 1904.41(a)(2) would have applied to establishments with 20 or more employees in designated, *i.e.*, high-hazard industry groups (classified at the four-digit level in NAICS) and/or high-hazard industry sectors (classified at the two-digit level in NAICS). High-hazard industry groups (four-digit NAICS) would have been defined as industries with DART rates that are greater than or equal to 2.0. High-hazard industry sectors (two-digit NAICS) would have included agriculture, forestry, fishing and hunting; utilities; construction; manufacturing; and wholesale trade.

In Alternative H, OSHA considered an alternative approach to defining the industry scope of these two sections of the proposed rule, by limiting the industry coverage to include only industry groups that meet a designated DART cut-off. This approach would not have included coverage of designated industry sectors as a criterion.

Some commenters supported Alternative H as a way for OSHA to focus its efforts on high-hazard industry groups. For example, FedEx Corporation supported Alternative H with a DART cut-off rate of 3.0, commenting that "this would focus OSHA's limited resources on high hazard industries and employers with high DART rates" (Ex. 1338). The American Coatings Association (ACA) and the Reusable Industrial Packaging Association (RIPA) made similar comments (Exs. 1329, 1367).

The National Retail Federation (NRF) commented, "In NRF's view, both the 2.0 as well as the 3.0 DART rate are too low. NRF believes that, if OSHA is going to promulgate this standard at all, it should revise the proposed threshold DART rate to ensure that this rule is designed to focus attention on true high hazard industries . . . A DART cut-off of 3.6 derives from current data and is reasonably connected to the goal of the Proposed Regulation and any inspection plan that originates from the data collection" (Ex. 1328).

However, other commenters opposed Alternative H because it would greatly reduce the coverage of the rule (Exs. 1211, 1350, 1374 1381, 1384, 1387). The International Brotherhood of Teamsters commented, "We support the proposed approach rather than the alternative. The current approach is a better means for capturing higher hazard industries and establishments. Lowering [coverage] to industries with a DART rate of greater than/equal to 2.0 would reduce the number of smaller establishments covered by about 100,000 and the number of larger establishments covered by 16,000" (Ex. 1381).

The AFL–CIO commented that "[T]hese thresholds are too restrictive and limited. Indeed, according to the preamble, employing a DART threshold of 3.0 would cover fewer establishments (152,000) than are covered under the current ODI (160,000). The current ODI has employed a combination of 2 digit and 4 digit thresholds similar to the proposed rule. There is no reason to change this approach" (Ex. 1350).

UNITE HERE also expressed concerns that Alternative H would leave vulnerable workers at risk, commenting that "the alternative proposals to limit coverage to a DART threshold of 3.0 at the four digit level would result in excluding NAICS 7211—Traveler Accommodation. This industry sector is a growing sector with a growing workforce. Certain job titles are predominantly female, women of color and immigrant workers. We believe excluding 7211 would result in increased workplace injuries and illnesses and decreased prevention" (Ex. 1374).

OSHA believes that Alternative H would overly limit the scope of the rule and agrees with commenters who stated that there is no compelling reason to change the approach OSHA used in the ODI of using a combination of industrial classification levels to identify high-hazard industry sectors and groups. In addition, using a DART cut-off of 3.0 would result in having less establishment-specific data for establishments with 20 or more employees available to OSHA and the public. As stated in the preamble to the proposed rule, the intention of this rulemaking is to increase the amount of establishment-specific data reported to OSHA. Therefore, like the proposed rule, the final rule requires electronic submission of part 1904 records by establishments with 250 or more employees, as well as annual electronic submission of the OSHA Form 300A by establishments with 20 to 249 employees in designated high-hazard industries (four-digit NAICS) and industry sectors (two-digit NAICS).

Alternative I—Enterprise-Wide Submission

In the preamble to the proposed rule, OSHA stated that it was considering adding a provision that would have required some enterprises with multiple establishments to collect and submit some part 1904 data for those establishments. Alternative I would have applied to enterprises with a minimum threshold number of establishments (such as five or more) that are required to keep records under part 1904. These enterprises would have been required to collect OSHA Form 300A (annual summary) data from each of their establishments that are required to keep injury/illness records under part 1904. The enterprise would then have electronically submitted the data from each establishment to OSHA. For example, if an enterprise had seven establishments required to keep injury/illness records under part 1904, the enterprise would have submitted seven sets of data, one for each establishment.

OSHA also stated in the preamble to the proposed rule that Alternative I would have applied to enterprises with multiple levels within the organization. For example, if XYZ Chemical Inc. owns three establishments, but is itself owned by XYZ Inc., which has several wholly owned subsidiaries, then XYZ Inc. would have done the reporting for all establishments it controls. These requirements would have only applied to establishments within the jurisdiction of OSHA and subject to OSHA's recordkeeping regulation. Establishments within the corporate structure but located on foreign soil would not have been subject to the requirement in Alternative I.

There were general comments supporting Alternative I, opposing Alternative I, and providing suggestions about the implementation of Alternative I. The proposed rule also asked 16 specific questions related to Alternative I, and OSHA received comments addressing those questions as well.

Commenters who generally supported Alternative I did so for a variety of reasons, including more useful information, more corporate involvement in establishment-level prevention of workplace injuries and illnesses, and coordination with current OSHA enterprise-level efforts.

For more useful information, NIOSH commented that a 2006 study by Mendeloff *et al.* found that "firm size (or enterprise size) may be more important than establishment size in determining levels of risk . . . Theoretically, enterprise size may have a substantial impact on the ability to prevent injuries and illnesses. Business policies, practices, and strategies generally vary by size of employer, and large businesses may have more resources for protecting employee safety and health, and reducing workplace hazards and exposures compared with small businesses. Enterprise-level differences in occupational safety and health management systems may exist in specialization and expertise, development of training and reporting systems, amount of available data, and other factors" (Ex. 0216).

Several commenters commented that enterprise-level safety and health data would be extremely useful to OSHA as well as other groups (Exs. 0241, 1278, 1327, 1345, 1350, 1384, 1387). For example, Worksafe commented that this data would be "extremely useful, not only to OSHA but also to advocates, employers, employees, unions, and representatives to ensure improved identification and resolution of workplace health and safety hazards" (Ex. 1278). The National Safety Council (NSC) added that "[t]he value of benchmarking would be substantially enhanced if the Enterprise Wide Alternative is adopted. This option would allow for the calculation of enterprise wide rates and allow for more meaningful benchmarking among enterprises" (Ex. 0241).

There were also several comments about the scarcity of enterprise-level data, especially for OSHA. NIOSH commented that "few data are available at the enterprise level. This lack of data is a principal source of imprecision in defining small business. Greater clarity in measurement of both structure and size of employer would aid small business research and prevention efforts such as those conducted by the NIOSH Small Business Assistance and Outreach Program" (Ex. 0216). The AFL–CIO and Change to Win provided similar comments (Exs. 1350, 1380).

With respect to corporate involvement in establishment-level prevention of workplace injuries and illnesses, the American College of Occupational and Environmental Medicine commented that "enterprise-level reporting will increase the likelihood that the chief corporate officers are aware of potential variations in the safety of different business processes and establishment practices that put employees at risk. Greater corporate awareness may enhance corporate oversight and improve health and safety throughout all establishments" (Ex. 1327). The AFL–CIO and the Service Employees International Union (SEIU) provided similar comments (Exs. 1350, 1387).

For coordination with current OSHA enterprise-level efforts, the AFL–CIO commented that "[t]he concept of corporate level responsibility under the OSH Act is well-established. While the majority of OSHA's enforcement efforts are focused at the establishment level, the OSH Act itself and its obligations, including the recordkeeping requirements, apply to employers. For decades, OSHA has utilized corporate-wide settlements as a means to bring about compliance on a corporate-wide basis, and recently OSHA has attempted to utilize this corporate-wide approach in its initial enforcement actions. Under the current Severe Violator Enforcement Program (SVEP), violations at one establishment trigger expansion of oversight to other establishments of the same employer" (Ex. 1350). The Service Employees International Union (SEIU) provided a similar comment (Ex. 1387).

Finally, the United Steelworkers (USW) commented that "[e]nterprise wide data must retain discernible facility identification information so that stakeholders can determine which facility each injury or illness entry occurred [in]. This will provide stakeholders with the ability to determine where specific hazards exist and engage in efforts to eliminate or reduce these hazards" (Ex. 1424).

On the other hand, several commenters generally opposed implementation of Alternative I for various reasons, including the comparative ineffectiveness of enterprises versus establishments in promoting workplace health and safety, reduced data quality, employer burden, and legality (Exs. 1198, 1206, 1221, 1338).

For the effectiveness of enterprises versus establishments in promoting workplace health and safety, the Food Marketing Institute commented that "there are many corporate hierarchies in which there are 'enterprises' above 'establishments' that are not involved in or responsible for the safety controls in place at the establishments. Indeed, there are many instances in which a parent company may own 51% of the stock of a subsidiary but is in no way involved in that subsidiary's day-to-day activities" (Ex. 1198). The North American Insulation Manufacturers Association (NAIMA) provided a similar comment (Ex. 1221).

FedEx Corporation commented that "the safety resources in place at each FedEx operating company . . . are in the closest proximity to the unique day-to-day operations of their establishments, and are therefore best equipped to enhance the workplace safety of their employees" (Ex. 1338). Similarly, the Interstate Natural Gas Association of America (INGAA) also commented that "[i]t is well understood that separate establishments, even separate establishments that operate as part of a single larger enterprise, do not all operate the same: each establishment has different personnel, procedures, processes and protocols" (Ex. 1206).

There were also comments that enterprise-level data would not be useful for improving workplace safety and health (Exs. 1198, 1279, 1338, 1408, 1412). For example, the National Association of Home Builders (NAHB) commented that "OSHA claims that enterprise-wide submission of establishment data to the enterprise will improve communication and reporting between establishments and enterprises and this will lead to enterprise's ability to solve establishment safety and health problems . . . Again, the agency has failed to establish any benefits for the proposed rulemaking . . . That is readily apparent here with OSHA's proposed claims regarding the enterprise-wide alternative. OSHA fails to cite any example, research paper, case study, or journal article to support this claim" (Ex. 1408).

The National Association of Manufacturers (NAM) commented that "[t]here is no evidence suggesting that there is currently a lack of communication regarding safety and health between establishments and enterprises, nor is there any evidence that this alleged benefit will somehow reduce workplace injuries and illnesses" (Ex. 1279).

For data quality, the North American Insulation Manufacturers Association (NAIMA) commented that "[w]ith certain umbrella corporations holding levels upon levels of subsidiaries, it could conceivably turn into a never-ending task . . . OSHA will undoubtedly get multiple reports on the same sites, omitted reports, and have a massive burden trying to audit all that information. At best, it is impractical and imprudent to pursue enterprise-wide reporting (Ex. 1221). The

International Association of Drilling Contractors (IADC) commented that "[m]any member companies have establishments (rigs) operating in multiple zip codes. Grouping them together in one enterprise report would not allow for data separation into various states" (Ex. 1199).

Several commenters commented that enterprise-wide submission would create confusion when applying OSHA's recordkeeping requirements (Exs. 1198, 1338, 1343, 1356, 1411). For example, the Food Marketing Institute commented that "new definitions will have to be created for all the core terminology (*e.g.,* 'enterprise') and, as legal history has demonstrated repeatedly, regardless of the definition, much litigation will be generated before the true bounds of the terms are discovered. Further, the opportunities for wide-scale confusion and error are abundant" (Ex. 1198). Other commenters expressed similar concerns about definitions (Exs. 1200, 1221).

In response, OSHA has decided not to include a requirement in the final rule for enterprise-wide collection and submission of recordkeeping data. OSHA based this decision on two main reasons. First, OSHA agrees with commenters who stated that it would be difficult to administer an enterprise-wide collection and submission requirement. Specifically, because there are wide variations in corporate structure, OSHA believes that it would be difficult to establish a part 1904 definition of enterprise. This is particularly a concern when some corporate structures include establishments that are otherwise legally separate entities. Also, the question of enterprise ownership or control of specific establishments can be an extremely complex legal issue, especially when parent companies have multiple divisions or subsidiaries. OSHA also believes that in some cases it may be difficult for larger enterprises to identify all of the establishments under its ownership or control.

Second, when the proposed rule for this rulemaking was issued in November 2013, OSHA's recordkeeping regulation included a list of partially-exempt industries based on the Standard Industrial Classification (SIC) system. On September 18, 2014, OSHA published a final rule in the **Federal Register** revising the list of partially-exempt industries in appendix A to subpart B of part 1904. [79 FR 56130]. As part of this revision, partial exemption to OSHA's recordkeeping regulation is now based on the North American Industry Classification System (NAICS).

Compared to the SIC system, NAICS established several new industry categories, including specific categories for establishments conducting office or management activities. One of the industry classifications newly partially exempt from OSHA recordkeeping requirements is NAICS 5511, Company Management and Enterprises. Because of this change, OSHA believes it cannot now include a requirement in this final rule for enterprise-wide collection and submission of part 1904 data.

OSHA also wishes to point out that nothing in this final rule prevents enterprises or corporate offices from voluntarily collecting and submitting part 1904 data for their establishments. Based on the comments to Alternative I, as well as the Agency's own experience, OSHA believes that there are benefits for enterprise-wide collection and submission of recordkeeping data. As noted by commenters, large companies generally have more resources for protecting employee safety and health and reducing workplace hazards and exposures. Enterprise-level collection and submission of part 1904 data increases the likelihood that corporate offices will be aware of variations in establishment processes and practices that place employees at risk. OSHA believes that greater corporate involvement and oversight enhance safety and health at all establishments. Accordingly, OSHA encourages enterprises and corporate offices to voluntarily collect and electronically submit part 1904 records for their establishments required to submit such records under the final rule.

Questions in the NPRM

In addition to Alternatives A through I, the preamble to the proposed rule included several questions about specific issues in this rulemaking. Some of these issues are addressed elsewhere in this preamble. The remaining issues are addressed below.

Implications of Required Electronic Data Submission

In the preamble to the proposed rule, OSHA asked, "What are the implications of requiring all data to be submitted electronically? This proposed rule would be among the first in the federal government without a paper submission option." [78 FR 67271].

Several commenters supported mandatory electronic submission. The Phylmar Regulatory Roundtable (PRR) commented that "PRR company establishments currently collect and record injury and illness data manually and electronically. Members prefer submitting data electronically over paper submission" (Ex. 1110). The United Food & Commercial Workers International Union (UFCW) commented that "large employers (those greater than 250) can meet requirements for mandatory electronic reporting once OSHA provides the technical means to do so" (Ex. 1345).

The American Federation of Teachers (AFT) commented, "Once the [electronic reporting] requirement is in place, OSHA will for the first time have the most comprehensive and timely data base on large and high hazard establishments. The agency will be able to do frequent and systematic comparisons between like establishments and better target consultation and enforcement. There will also be opportunities to track patterns of specific injuries and illnesses as we have never had before. This ability will be important for research as well as enforcement . . . Electronic reporting will assist us in not only identifying new hazards but also measuring their impact of in a timely manner (Ex. 1358). The AFL–CIO made a similar comment (Ex. 1350).

However, many other commenters expressed concern that only allowing electronic submission would burden small establishments without Internet access, especially those in rural areas, and that OSHA should continue to allow a paper-based reporting option (Exs. 0179, 0211, 0253, 0255, 1092, 1113, 1123, 1124, 1190, 1198, 1199, 1200, 1205, 1273, 1322, 1327, 1332, 1342, 1343, 1359, 1366, 1370, 1386, 1401, 1408, 1410, 1411, 1416, 1417). For example, the American Forest & Paper Association commented that "OSHA must continue to allow a paper-based reporting option. Many businesses, particularly small firms located in rural areas, do not have ready access to the Internet or may find electronic reporting burdensome because they currently have a paper-based record system" (Ex. 0179). The Texas Cotton Ginners Association (TCGA) made a similar comment (Ex. 0211). The Food Marketing Institute further commented that "OSHA acknowledges that 30% of 2010 ODI establishments did not electronically submit injury and illness information and that "most agencies" currently allow paper submission of information. *Id.* at 67273. This confirms that OSHA is aware that not all small businesses will have the access necessary for electronic submission" (Ex. 1198).

Several commenters expressed particular concern about the burden of mandatory electronic submission on farmers. The California Farm Bureau Federation (CFBF) commented that a recent USDA survey showed that "68 percent of farmers (both livestock/poultry and crop producers) have a computer and only 67 percent have internet access . . . the same USDA report shows that only a mere 40 percent of farmers actually use a computer to conduct their farming business. Should OSHA move forward with the rule, the agency must give consideration to allowing paper submissions. Because submission of these records will be mandatory, failing to do so will create a hardship on agricultural employers, and increase the cost burden of the rule for employers" (Ex. 1366). The American Farm Bureau Federation (AFBF), Pennsylvania Farm Bureau (PFB), the New York Farm Bureau (NYFB), and the Louisiana Farm Bureau Federation (LFBF) provided similar comments (Exs. 1113, 1359, 1370, 1386).

OSHA agrees with the commenters who supported electronic submission. Specifically, OSHA believes that electronic submission is necessary if a data system is to provide timely and useful establishment-specific information about occupational injuries and illnesses. In addition, as discussed in Section VI Final Economic Analysis and Regulatory Flexibility Analysis, OSHA believes that establishments with 20 or more employees are highly likely to have access to the Internet and that the burden of electronic reporting is low even for the few employers for whom it may be more difficult to access the Internet. Consequently, the final rule requires electronic submission of injury and illness records to OSHA.

Commenters also expressed several technical concerns about the electronic submission requirement. The Associated General Contractors of New York, LLC (AGC NYS) expressed the concern that "those that attempted to submit their information but failed due to a Web site that does not function properly may also be considered to be non-compliant with such regulations" (Ex. 1364). Both the National Ready Mixed Concrete Association (NRMCA) and the American Subcontractors Association (ASA) suggested that OSHA should maintain a paper submission option for establishments experiencing temporary technical difficulties with electronic submission (Exs. 0210, 1322).

In response, OSHA believes that there are more cost-effective ways to deal with Web site problems than maintaining a paper submission option. For example, OSHA plans to allocate resources to help employers who have difficulty submitting required information because of unforeseen circumstances. Specifically, OSHA intends to establish a help desk to support data collection and submission under the final rule. In addition, employers will be able to report the information from a different location, such as a public library. Further, for the data collection under the ODI, OSHA provided employers multiple chances after the due date to submit their data before issuing citations for non-response. OSHA expects to continue this practice when employers have technical issues and are unable to submit their information under this final rule.

In addition, OSHA will phase in implementation of the data collection system. In the first year, all establishments required to routinely submit information under the final rule will be required to submit only the information from the Form 300A (by July 1, 2017). In the second year, all establishments required to routinely submit information under the final rule will be required to submit all of the required information (by July 1, 2018). This means that, in the second year, establishments with 250 or more employees that are required to routinely submit information under the final rule will be responsible for submitting information from the Forms 300, 301, and 300A. In the third year, all establishments required to routinely submit under this final rule will be required to submit all of the required information (by March 2, 2019). This means that beginning in the third year (2019), establishments with 250 or more employees will be responsible for submitting information from the Forms 300, 301, and 300A, and establishments with 20–249 employees in an industry listed in appendix A to subpart E of part 1904 will be responsible for submitting information from the Form 300A by March 2 each year. This will provide sufficient time to ensure comprehensive outreach and compliance assistance in advance of implementation.

Finally, OSHA will use feedback from users of the data collection system from the first year of implementation to inform the development and improvement of the data collection system. OSHA will incorporate user experience and design improvements throughout the life of the data collection system, based on user feedback and emerging technology.

Coverage of Industries in § 1904.41(a)(2)

Section 1904.41(a)(2) of the proposed rule would have required establishments with 20 or more employees, but fewer than 250 employees, in designated industries, to electronically submit information from the 300A annual summary to OSHA or OSHA's designee on an annual basis. The list of designated industries subject to the annual submission requirement in proposed § 1904.41(a)(2) was included in proposed appendix A to subpart E. The designated industries in proposed Appendix A to Subpart E represented all industries covered by part 1904 with a 2009 DART rate in the BLS SOII of 2.0 or greater, excluding four selected transit industries where local government is a major employer.

In the preamble to the proposed rule, OSHA asked, "More current BLS injury and illness data will be available at the time of the final rulemaking. Use of newer data may result in changes to the proposed industry coverage. Should OSHA use the most current data available in determining coverage for its final rule? Would this leave affected entities without proper notice and the opportunity to provide substantive comment?" [78 FR 67271].

OSHA received several comments related to this question. Two commenters supported using 2009 BLS injury and illness data for determining coverage for high-hazard industries under the final rule, on grounds that more current data would leave affected entities without proper notice and the opportunity to provide comment (Exs. 1206, 1329). One commenter, the California Department of Industrial Relations (DIR), Office of the Director, recommended "ways of increasing the stability of the system, namely, not changing industries required to report, not using a phased in approach to reporting, and encouraging use of data through a successful data sharing Web site" (Ex. 1395). The International Brotherhood of Teamsters supported using the most current data available for determining coverage in the final rule, commenting that "[w]e recommend that OSHA use the latest BLS data. The results of the Survey of Occupational Injuries and Illnesses (SOII) are one year behind, but they may point to emerging or immediate hazards" (Ex. 1381). Another commenter supported OSHA's use of the most current BLS data available for determining coverage, and stated that OSHA should be able to use the new data without needing a new round of notice and comment because it discussed this possibility in the proposed rule. This commenter also commented that it would be counterproductive to limit OSHA to the BLS data available at the time of the proposed rule (Ex. 1211).

OSHA also received a comment from the National Automobile Dealers Association (NADA) stating that "OSHA should drop the proposal's use of a one year (2009) DART rate. Focusing on a single year risks mischaracterizing the injury and illness rates for a given industry and/or capturing an uncharacteristic decline or spike. A more appropriate approach would be a rolling three year average similar to what OSHA has used to periodically set partial exemptions from its injury/illness recording mandates. Of course, any reporting mandate should reset annually for each industry sector based on a three-year average of its most current BLS SOII data" (Ex. 1392).

After carefully considering all of these comments, OSHA has decided to use a three-year average of BLS data from 2011, 2012, and 2013 to determine coverage for § 1904.41(a)(2) of the final rule. This three-year range represents the most current BLS data available at the time of this final rule. OSHA agrees with the International Brotherhood of Teamsters that using the most current BLS data available at the time of the final rule, rather than outdated data, is the most effective way to identify emerging workplace hazards, as well as the most effective way to identify the list of high hazard industries for inclusion in appendix A to subpart E. A three-year average will reduce the effects of natural year-to-year variation in industry injury/illness rates, and it is consistent with OSHA's current approach in determining the partial exemption of industries under existing § 1904.2. The alternative would have been to use a single year of BLS data from 2009 for a final rule that will go into effect in 2017.

OSHA also agrees with commenters who stated that the Agency provided sufficient notice and opportunity for comment in the NPRM by explicitly asking whether the Agency should use the most current data available when determining coverage for the final rule. The combination of OSHA's request for comment on the approach that it ultimately adopted in the final rule, and the comments and testimony received in response to the proposed rule, provided the regulated community with adequate notice regarding the outcome of the rulemaking. *See, e.g., Nat'l Mining Ass'n* v. *Mine Safety & Health Admin.*, 512 F.3d 696, 699 (D.C. Cir. 2008); *Miami-Dade County* v. *U.S. E.P.A.*, 529 F.3d 1049, 1059 (11th Cir. 2008); *United Steelworkers of America, AFL–CIO–CLC* v. *Marshall*, 647 F.2d 1189, 1221 (D.C. Cir. 1980) ("a final rule may properly differ from a proposed rule and indeed must so differ when the record evidence warrants the change . . . . Where the change between proposed and final rule is important, the question for the court is whether the final rule is a 'logical outgrowth' of the rulemaking proceeding"). The list of designated industries in Appendix A to Subpart E of the final rule is a logical outgrowth of the proposal, and the number of comments provides a clear indication that the affected members of the public are not only familiar with the issue of using the most current data, but also viewed the inclusion of such data as a potential outcome of this rulemaking. As a result, unlike the proposed rule, the final rule will use a three-year average (2011, 2012, 2013) DART rate of 2.0 or greater for determining the list of industries included in appendix A to subpart E.

Also in the preamble to the proposed rule, OSHA asked whether the list of designated industries in appendix A to subpart E should remain the same each year, or whether the list should be adjusted each year to reflect the most current BLS injury and illness data. OSHA also asked how OSHA could best inform affected establishments about the adjustments, if the list were adjusted.

One commenter supported adjusting the list of designated industries each year to reflect the most current BLS injury and illness data (Ex. 1211). Other commenters supported adjusting the list in other ways. For example, the International Union (UAW) commented that "annual updating is too frequent and would leave employers confused as to whether or not they need to report. Updating every three years would be more appropriate" (Ex. 1384). The International Brotherhood of Teamsters and the Service Employees International Union (SEIU) provided similar comments (Exs. 1381, 1387). The American Federation of Teachers (AFT) commented that "[t]he AFT recommends that new establishments that meet the requirement of a DART rate of 2.0 be added every year but that the original list of high hazard establishments be maintained regardless of changes to their DART that puts them below the threshold. Those original establishments should continue reporting for a minimum of ten years in order to ascertain if their DART rates are trending lower over the long term" (Ex. 1358).

On the other hand, the California Department of Industrial Relations (DIR), Office of the Director supported "increasing the stability of the system, namely, [by] not changing industries required to report" (Ex. 1395).

Finally, Thoron Bennett supported requiring establishments with 20 or more employees in all industries to report, rather than limiting the requirement to establishments with 20 or more employees on a list of designated high-hazard industries. He further commented that OSHA should "[f]orget the tiered reporting based on employment numbers or designated industries. Simply require electronic data submission for all employers who have to fill out the OSHA 300/300A/301 logs" (Ex. 0035).

OSHA agrees with the commenters who stated that the list of designated industries in appendix A to subpart E should not be updated each year. OSHA believes that moving industries in and out of appendix A to subpart E each year would be confusing. OSHA also believes that keeping the same industries in appendix A to subpart E each year will increase the stability of the system and reduce uncertainty for employers. Accordingly, OSHA will not, as part of this rulemaking, include a requirement to annually or periodically adjust the list of designated industries to reflect more recent BLS injury and illness data. Any such revision to the list of industries in appendix A to subpart E in the future would require additional notice and comment rulemaking.

The designated industries, which will be published in appendix A to subpart E of the final rule, will be as follows:

NAICS	Industry
11	Agriculture, forestry, fishing and hunting.
22	Utilities.
23	Construction.
31–33	Manufacturing.
42	Wholesale trade.
4413	Automotive parts, accessories, and tire stores.
4421	Furniture stores.
4422	Home furnishings stores.
4441	Building material and supplies dealers.

NAICS	Industry
4442	Lawn and garden equipment and supplies stores.
4451	Grocery stores.
4452	Specialty food stores.
4521	Department stores.
4529	Other general merchandise stores.
4533	Used merchandise stores.
4542	Vending machine operators.
4543	Direct selling establishments.
4811	Scheduled air transportation.
4841	General freight trucking.
4842	Specialized freight trucking.
4851	Urban transit systems.
4852	Interurban and rural bus transportation.
4853	Taxi and limousine service.
4854	School and employee bus transportation.
4855	Charter bus industry.
4859	Other transit and ground passenger transportation.
4871	Scenic and sightseeing transportation, land.
4881	Support activities for air transportation.
4882	Support activities for rail transportation.
4883	Support activities for water transportation.
4884	Support activities for road transportation.
4889	Other support activities for transportation.
4911	Postal service.
4921	Couriers and express delivery services.
4922	Local messengers and local delivery.
4931	Warehousing and storage.
5152	Cable and other subscription programming.
5311	Lessors of real estate.
5321	Automotive equipment rental and leasing.
5322	Consumer goods rental.
5323	General rental centers.
5617	Services to buildings and dwellings.
5621	Waste collection.
5622	Waste treatment and disposal.
5629	Remediation and other waste management services.
6219	Other ambulatory health care services.
6221	General medical and surgical hospitals.
6222	Psychiatric and substance abuse hospitals.
6223	Specialty (except psychiatric and substance abuse) hospitals.
6231	Nursing care facilities.
6232	Residential mental retardation, mental health and substance abuse facilities.
6233	Community care facilities for the elderly.
6239	Other residential care facilities.
6242	Community food and housing, and emergency and other relief services.
6243	Vocational rehabilitation services.
7111	Performing arts companies.
7112	Spectator sports.
7121	Museums, historical sites, and similar institutions.
7131	Amusement parks and arcades.
7132	Gambling industries.
7211	Traveler accommodation.
7212	RV (recreational vehicle) parks and recreational camps.
7213	Rooming and boarding houses.
7223	Special food services.
8113	Commercial and industrial machinery and equipment (except automotive and electronic) repair and maintenance.
8123	Dry-cleaning and laundry services.

OSHA notes that 15 industries in appendix A to subpart E in the final rule were not included in proposed appendix A to subpart E. These industries are Specialty Food Stores (NAICS 4452), Vending Machine Operators (NAICS 4542), Urban Transit Systems (NAICS 4851), Interurban and Rural Bus Transportation (NAICS 4852), Taxi and Limousine Service (NAICS 4853), School and Employee Bus Transportation (NAICS 4854), Other Transit and Ground Passenger Transportation (NAICS 4859), Postal Service (NAICS 4911), Other Ambulatory Health Care Services (NAICS 6219), Community Food and Housing, and Emergency and Other Relief Services (NAICS 6242), Performing Arts Companies (NAICS 7111), Museums, Historical Sites, and Similar Institutions (NAICS 7121), RV (Recreational Vehicle) Parks and Recreational Camps (NAICS 7212), Rooming and Boarding Houses (NAICS 7213), and Special Food Services (NAICS 7223). Conversely, three industries that were included in proposed appendix A to subpart E are not included in the final Appendix A to Subpart E. These industries are Inland Water Transportation (NAICS 4832), Scenic and Sightseeing Transportation, Water (NAICS 4872), and Home Health Care Services (NAICS 6216).

The following table summarizes the changes in affected industries by using the three-year average of BLS data (2011, 2012, 2013) compared to using 2009 BLS data and provides the expected number of affected establishments in each industry based on the most recent 2012 County Business Patterns data:

NAICS	Industry	Expected No. of affected establishments
In appendix A to subpart E of the final rule (using three-year average of 2011, 20012, 2013 BLS data), but NOT in appendix A to subpart E of the proposed rule (using 2009 BLS data)		
4452	Specialty food stores	1221
4542	Vending machine operators	493
4851	Urban transit systems	374
4852	Interurban and rural bus transportation	184
4853	Taxi and limousine service	740
4854	School and employee bus transportation	2025
4859	Other transit and ground passenger transportation	918
4911	Postal service	*
6219	Other ambulatory health care services	3282
6242	Community food and housing, and emergency and other relief services	2481
7111	Performing arts companies	1079
7121	Museums, historical sites, and similar institutions	1161
7212	RV (recreational vehicle) parks and recreational camps	392
7213	Rooming and boarding houses	67
7223	Special food services	7812
In Appendix A to Subpart E of the proposed rule (using 2009 BLS data), but NOT in Appendix A to Subpart E of the final rule (using three-year average of 2011, 2012, 2013 BLS data)		
4832	Inland water transportation	123
4872	Scenic and sightseeing transportation, water	131
6216	Home health care services	12801

* Insufficient data.

Design of the Electronic Submission System

In the preamble to the proposed rule, OSHA asked, "How should the electronic data submission system be designed? How can OSHA create a system that is easy to use and compatible with other electronic systems that track and report establishment-specific injury and illness data?" [78 FR 67271].

There were many comments with suggestions about the overall design of OSHA's electronic submission system. Several commenters commented that OSHA's electronic data submission system should be compatible with existing systems. The United Steelworkers (USW) commented that "[i]t is important that OSHA ensure that electronic systems put in place for this initiative are compatible with existing systems in common use. We also encourage OSHA to update their system as necessary to keep up with advances in technology and facilitate the transfer of employer data" (Ex. 1424). Rachel Armont; the California Department of Industrial Relations (DIR), Office of the Director; and Shawn Lewis provided similar comments (Exs. 0198, 1320, 1395).

The International Union (UAW) commented that "such a system should allow for employers [to] upload existing files" (Ex. 1384). Harvey Staple commented that "the states and OSHA [could] work together to develop a system whereby one entry into an electronic log could be used for multiple information reporting (*i.e.,* state and federal). It would further enhance all parties involved if the system could be tied into the workers compensation system to maximize the data already captured without adding another paperwork burden" (Ex. 0154).

In response, OSHA notes that, because there are many commercial software products on the market for recording and managing information on workplace injuries/illnesses to support compliance with OSHA recordkeeping requirements, OSHA plans to coordinate with trade associations and health and safety consultants to identify the products in widest use. OSHA would then review available information about these products to help inform relevant considerations during development of the OSHA system for ensuring ease-of-use and compatibility with commercial products in common use.

When OSHA develops the data collection system, the Agency will consider commercial systems used by establishments to maintain their injury/illness records. This means that the Agency's system may provide a mechanism and protocol for employers to transmit their data electronically instead of completing online forms. For example, the system could allow employers to securely transfer encrypted data over the Web in an acceptable data file format (*e.g.,* MS Excel, XML, or csv) for validation and import into the electronic reporting system. OSHA will provide users with easy-to-follow guidance that addresses required data elements (a data dictionary), format and other technical considerations, and steps involved in validation, transfer, and confirmation. Routines will be programmed to automate as much of the process as possible, with prompts for manual review as needed.

Quick Incidents suggested the use of an Application Programming Interface (API), commenting that "Application Programming Interfaces (APIs) have gained widespread usage in the corporate world . . . Having this type of machine to machine communication ensures that data is transferred securely, accurately and quickly without any human intervention . . . An API would allow companies to connect their incident recording software directly to the OSHA reporting system. Incident reports would be transmitted seamlessly without any redundancy. For companies with an existing incident recording system this proposed API would allow

OSHA submission without any additional burden" (Ex. 1220).

OSHA will explore this suggestion during development of the data collection system, in addition to the file transfer concept described above.

The Risk and Insurance Management Society suggested another approach, commenting that "[m]any employers have in place systems to report their injury and illness data through the Electronic Data Interchange . . . If OSHA decides to move forward with the proposed rule, then an effort should be made to accept data submitted through the current Electronic Data Interchange system" (Ex. 1222).

The International Association of Industrial Accident Boards and Commissions (IAIABC) suggested that OSHA should "consider the benefits of using the IAIABC's established First and Subsequent Reports of Injury Standard (IAIABC EDI Claims Standard). Implementation of an existing electronic standard would be much faster and easier than developing a brand new electronic reporting protocol . . . All of the IAIABC's EDI standards have been developed by workers' compensation business and technical experts and are widely used and actively supported. To date, 40 jurisdictions have implemented at least one of the IAIABC's EDI standards" (Ex. 1104).

In response, OSHA notes that IAIABC's EDI claim standards are used by many states for standardizing the submission of workers' compensation claims information. When OSHA develops the data collection system, the Agency will assess whether some variation of the standard or its basic logic might be appropriate for ensuring consistency in the submission and processing of data to OSHA.

However, the Dow Chemical Company commented that "[i]t is probably literally impossible for OSHA to design its web portal to be compatible with every electronic system that some employer may be using. Dow is not aware of any web portal that is compatible with SAP-based systems, Excel spreadsheets, Adobe Acrobat, Lotus Notes, Oracle, and the multitude of other options for keeping electronic records" (Ex. 1189).

Several commenters also expressed specific concerns about the electronic data submission system's compatibility with 301-equivalent forms. The U.S. Poultry & Egg Association commented that "OSHA does not appear to realize that many employers do not actually use the OSHA 301 Form. Instead, they use an equivalent form, often for workers compensation purposes. Presumably, OSHA would require employers to translate the information into the '301 Form' on the internet. This may not be as straightforward as OSHA makes it seem and certainly it may be more costly than OSHA anticipates. It also not only increases the risks of errors occurring in the translation but eliminates the usefulness of equivalent forms" (Ex. 1109). The National Association of Manufacturers and Littler Mendelson, P. C. provided similar comments (Exs. 1279, 1385).

OSHA's response is that, in developing the data collection system, OSHA may consider aspects of the IAIABC EDI standards that might inform and streamline data submission to the OSHA system, rather than designing the system to accept the workers' compensation forms or equivalent forms themselves. That is, because workers' compensation forms are for a specific purpose and can vary by state, the workers' compensation form data elements may not fit OSHA's reporting requirements.

The Association of Occupational Health Professionals in Healthcare (AOHP) commented about the importance of compatibility between existing systems and OSHA's electronic data submission system because "[t]he need to double enter the data is a significant concern. Double data entry was a significant concern when NIOSH was proposing the Occupational Safety Health Network (OHSN). NIOSH considered this concern and was able to create an interface to eliminate double data entry into this national database. Double data entry is costly in terms of time and the use of scarce human resources to manage these record keeping requirements (Ex. 0246). The Risk and Insurance Management Society provided a similar comment (Ex. 1222).

Several other commenters provided comments about making the electronic data submission system user-friendly. The Association of Occupational Health Professionals in Healthcare (AOHP) commented that "[c]onsideration should be given to a pilot to test the functioning of the Web site and the ease with which the data can be entered and submitted" (Ex. 0246). The California Department of Industrial Relations (DIR), Office of the Director commented that "[c]urrent OSHA guidelines for its forms are simple, easy-to-use, and are low-literacy friendly . . . Any electronic reporting system must balance the needs for uniform, easy to process data with the simplicity that paper records provided" (Ex. 1395).

The Phylmar Regulatory Roundtable (PRR) commented that "[t]he Proposed Rule calls for two methods of submitting data—use of online forms or batch submission of Excel or XML files. PRR supports this approach, as it appears to accommodate both establishment size (smaller establishments would likely use the online form) and the diverse software programs companies currently used to electronically manage injury and illness data" (Ex. 1210). The International Brotherhood of Teamsters provided a similar comment (Ex. 1381).

The Dow Chemical Company suggested that it is "vitally important for employers to receive immediate feedback as to whether their data entry was successful or unsuccessful. OSHA's web portal should respond to each and every attempt at data entry, by providing a confirmation of receipt or a confirmation of failure. The confirmation notice should describe what was received (or not received) with sufficient detail to be useful in resolving disputes in an enforcement context" (Ex. 1189).

The Allied Universal Corporation commented about potential technical issues, suggesting that "OSHA must also consider the heavy traffic flow as the submission deadline approaches, and ensure the Web site to submit electronically does not crash or cause further reporting problems" (Ex. 1192). Thoron Bennett noted another potential issue, commenting that "many companies have security measures that cause electronic reporting problems, particularly defense and research companies that safeguard their electronic information" (Ex. 0035).

Several commenters suggested that OSHA should consult on this issue with other governmental agencies that collect establishment-specific injury and illness data. Senator Tom Harkin commented that "OSHA's sister agency the Mine Safety and Health Administration (MSHA), along with other agencies like the Federal Railroad Administration (FRA) and Federal Aviation Administration (FAA), currently publish establishment-specific accident and injury and illness data. We believe that OSHA should consult with these agencies to learn about design problems and potential best practices to adopt before creating its database" (Ex. 1371). The International Brotherhood of Teamsters provided a similar comment (Ex. 1381).

In response, OSHA intends to use submitter registration, which would enable OSHA to issue a unique ID for reporting establishments. With user self-registration via an online submission form, the employer would have to complete an online registration form (available from a link on the electronic reporting system's home/login page) to obtain login information before gaining access to the new electronic reporting system for data submission. After the user submitted the online registration form, the user would receive a system-generated email confirming registration and providing login information. Registration for submission would be needed because, unlike under the ODI, employers required to submit data each year under this final rule will not receive notification. Alternate account registration and authentication provisions may be provided for electronic transmission of data. In contrast, special OSHA data collections under § 1904.41(a)(3) of this final rule will involve OSHA notifications to affected employers.

Updates for the Electronic Data Submission System

In the preamble to the proposed rule, OSHA asked, "Should the electronic data submission system be designed to include updates? Section 1904.33(b) requires employers to update OSHA Logs to include newly-discovered recordable injuries or illnesses and to show any changes that have occurred in the classification of previously-recorded injuries and illnesses." [78 FR 67271].

There were many comments about the benefits of allowing updates in the electronic data submission system. Several commenters noted that the data would be inaccurate without updates, because more information about cases often becomes available over time, after investigation (Exs. 1205, 1217, 1219, 1275, 1326, 1327, 1331, 1355, 1358, 1360, 1378, 1389, 1396, 1399, 1408). For example, the Pacific Maritime Association commented that "[i]t is common for an employer to record an employee's complaint at the time it is reported, prior to performing an evaluation of whether an injury has actually occurred or whether it is indeed workplace related. However, following an examination by a physician or consideration of the recordkeeping factors in Section 1904, recorded injuries regularly have to be removed or edited. The information submitted to OSHA and included on its database will be no different. Additionally, it is particularly troublesome that OSHA will base its enforcement and targeting efforts on this information, while at the same time conceding that there may be no way to update or amend information to ensure that it is accurate. Accordingly, if OSHA proceeds with this rule, PMA believes that it is imperative that this system be designed to allow for amendments" (Ex. 1326).

The U.S. Chamber of Commerce further commented that "OSHA acknowledges in its Notice for this Proposed Rule that the present recordkeeping rules require that employers update their OSHA Form 300 for five years. *See* 78 FR at 67271. Those updates will affect the forms described above which in turn would affect the accuracy of database entries. Thus, it is not a question of *whether* employers will need to update this information, but rather a question of *how* they will do so" (Ex. 1396).

Several other commenters commented that companies will look bad unfairly if an injury or illness is later found to be non-work-related and updates are not allowed. The National Marine Manufacturers Association commented that "it seems clear that companies will be held accountable for recordable incidents where either the actual cause was not under the employer's control or part of an employee's work or it is later discovered the injury was due to other causes. Based on the proposal, once these incidents are recorded and submitted to OSHA, NMMA understands that the reports cannot be amended. Both OSHA and the public would therefore have an inaccurate depiction of a company's safety record" (Ex. 1217). The National Electrical Contractors Association (NECA), Innovative Holdings of Iowa, Inc., and the Association of Union Constructors provided similar comments (Exs. 1125, 1275, 1389).

Other commenters commented that not allowing updates could lead to underreporting of marginally work-related cases. United Parcel Service, Inc. (UPS) commented that "[without updates] an employer would not want to err on the side of placing questionable entries onto the log. There would be no mechanism for striking through this data once it is publicly posted on OSHA's Web site. Rather than the rule promoting more revelations of injury and illness data, it would likely result in less data in circumstances where questions remained regarding recording of a case" (Ex. 1391). The International Warehouse Logistics Association (IWLA) provided a similar comment (Ex. 1360).

There were also commenters who opposed allowing updates. Several commenters believed that updates would be burdensome to employers. The Phylmar Regulatory Roundtable (PRR) commented that "updating quarterly submissions would be a major burden to employers. Consider the time involved for a record keeper at one establishment to communicate changes in status regarding particular injury cases on a regular basis to someone in an enterprise-level role who must then either access the online log or records to modify them or modify the enterprise database and resubmit it to the Web site" (Ex. 1110). The AFL–CIO, the International Warehouse Logistics Association (IWLA), the International Brotherhood of Teamsters, and the International Union (UAW) all provided similar comments (Exs. 1350, 1360, 1381, 1384). The Puget Sound Shipbuilders Association provided a comment that updates would be especially burdensome for certain establishments, such as those located on sea vessels (Ex. 1379).

The Dow Chemical Company commented that "[t]he system should not be designed to accept updates. This is because allowing updates is only half a step from requiring updates, and requiring updates would greatly increase the burden of the rule . . . . if the Agency ever wishes to see whether an employer has made any updates, OSHA already has the authority to pose that question to the employer—without imposing a universal obligation" (Ex. 1189).

The U.S. Chamber of Commerce commented that updates would also be burdensome for OSHA, stating that "any suggestion that OSHA will be able to keep up with this insurmountable task of maintaining an immediately accessible, accurate database is not credible" (Ex. 1396). The Pacific Maritime Association made a similar comment (Ex. 1326).

Finally, the Phylmar Regulatory Roundtable (PRR) suggested that the benefits of updates might be insignificant overall, since "[f]or large, established, legacy employers, many years of experience has shown that while updates are required by law, they are usually of minor consequence and/or correction and rarely, if ever, reflect a major and significant change in the safety performance of a company" (Ex. 1110).

Several commenters provided OSHA with suggestions about how to proceed with the question of whether or not the electronic data submission system should include updates. The American College of Occupational and Environmental Medicine (ACOEM) suggested that the system should allow but not require updates. They commented that "the accuracy of reported data could be optimized by permitting, though not requiring, employers to update their data after submission as new information becomes available about specific injuries, exposures, and diseases" (Ex. 1327). The International Brotherhood of Teamsters and Thoron Bennett provided similar comments (Exs. 0035, 1381).

Finally, the U.S. Chamber of Commerce commented that "if OSHA insists on pressing forward with a rule of this type, it must start over and reintroduce a proposed rule with an adequate system for updating submitted data that stakeholders may meaningfully consider and comment on" (Ex. 1396).

In response, OSHA agrees with the commenters who stated that allowing updates but not requiring updates would improve the accuracy of the data while limiting the burden on employers. Accurate data will help OSHA, researchers, employers, employees, and the public in their efforts to improve workplace safety and health. In addition, because the final rule requires annual submission of records for establishments with 250 or more employees, rather than quarterly submission as proposed in the NPRM, employers will be able to update information throughout the year before they certify the 300A. Annual reporting also reduces the likelihood that employers will need to update information after reporting to OSHA. Therefore, OSHA plans to design a reporting system that will allow but not require updates.

Accuracy of the Collected and Published Data

In the preamble to the proposed rule, OSHA asked, "How can OSHA use the electronic submission requirement to improve the accuracy of injury and illness records by encouraging careful reporting and recording of work-related injuries and illnesses?" [78 FR 67271].

Several commenters provided technical comments on ways for OSHA to improve the accuracy of injury and illness records collected through electronic submission. As mentioned in the previous section, many commenters commented that allowing updates could improve the accuracy of collected data (Exs. 1205, 1217, 1219, 1275, 1326, 1327, 1331, 1355, 1358, 1360, 1378, 1389, 1396, 1399, 1408). Rachel Armont further commented that "[o]n the data management side of things, perhaps [OSHA] could open up the site as a way to keep a real-time log of work-related injuries so it's not a one-time submission process" (Ex. 0198).

The Council of State and Territorial Epidemiologists (CSTE) commented that "[t]he proposed electronic collection of data, in the longer run, offers the opportunity to provide employers with electronic tools (prompts, definitions, consistency edits, and industry specific drop down lists) that have the potential to improve the quality of the data reported" (Ex. 1106). The American Federation of State, County, and Municipal Employees (AFSCME) provided a similar comment (Ex. 1103).

ORCHSE Strategies, LLC commented that OSHA should develop "a useful set of decision-making software to assist users in making accurate recordkeeping decisions. The current OSHA software does little more than summarize the text in the regulations. What is needed is software that employers can use to correctly answer their "what if" questions" (Ex. 1339).

The American College of Occupational and Environmental Medicine (ACOEM) commented that OSHA could provide "an electronic tool for employers to self-check their submitted information for recordkeeping errors and for deviance from industry averages (Ex. 1327). The American Federation of Teachers (AFT) provided a similar comment (Ex. 1358).

The American Federation of Teachers (AFT) also commented that "[t]he agency could provide training through consultation to employers on the importance and value of accurate record-keeping. Training could also be provided to trade associations, labor unions and other advocacy groups on the importance and value of encouraging employees to report their injuries and illnesses. As well, the agency might consider a special emphasis program of targeted inspections for record-keeping. The agency could target those establishments with the highest rates as well as the lowest rates to ascertain accuracy" (Ex. 1358).

Finally, the Phylmar Regulatory Roundtable (PRR) commented that "if OSHA seeks to encourage careful, accurate reporting and recording of injuries and illnesses, promulgating an *annual* submission requirement (versus quarterly) makes the most sense. Companies will have the time to review the quality of records, correct errors, and obtain the approval of a senior company official before providing data to OSHA. Requiring quarterly submission and updating is overly burdensome for employers and likely to result in more errors in the database, leaving OSHA with information that is less accurate" (Ex. 1110).

As mentioned in the previous section, OSHA agrees with the commenters who stated that allowing updates but not requiring updates would improve the accuracy of the data. Also as discussed above, although the proposed rule would have required quarterly reporting from companies with 250 or more employees, the final rule requires annual reporting. In addition, when OSHA develops the data collection system, the Agency will also incorporate a range of edit checks. Specifically, OSHA will leverage and expand on form validation routines and validation checks that were developed and refined over the years for the ODI online submission version of OSHA Form 300A (Form 196B). Edit checks can promote submission accuracy, for instance by alerting the submitter when input to a particular data field is outside the expected range or in conflict with other established parameters. The Agency also plans to program the data collection system so that, when the user logs in, the system will recognize the user and display appropriate user-specific information. For instance, for a first-time user, the system may present links for appropriate submission options (*e.g.*, annual summary data, special collections). For a return user, the system may display a dashboard page that shows recent submission history in a tabular format, including links to complete and draft (or in-process) submissions. From the dashboard, the user would be able to view a completed, executed form or continue with an in-progress submission. In this way, the user will be able to prepare a submission over multiple user sessions during the year before finalizing its submission to the Agency.

Finally, OSHA notes that, as discussed above, § 1904.32 already requires company executives subject to part 1904 requirements to certify that they have examined the annual summary (Form 300A) and reasonably believe, based on their knowledge of the process by which the information was recorded, that the annual summary is correct and complete. OSHA recognizes that most employers are diligent in complying with this requirement. However, a minority of employers is less diligent; in recent years, one third or more of violations of § 1904.32, and up to one tenth of all recordkeeping (part 1904) violations, have involved this certification requirement. It is OSHA's hope that, if this minority of employers knows that their data must be submitted to the Agency and may also be examined by members of the public, they may pay more attention to the requirements of part 1904, which could lead both to improvements in the quality and accuracy of the information and to better compliance with § 1904.32.

In the preamble to the proposed rule, OSHA also asked, "How should OSHA design an effective quality assurance program for the electronic submission of injury and illness records?" [78 FR 67271].

Several commenters commented on how OSHA could design an effective quality assurance program for the electronic submission of injury and illness records. The Southern Poverty Law Center (SPLC) commented that OSHA could improve data quality by "cross-checking [the data] with records kept in employers' own medical staff's offices, with workers' compensation records, and with any other available records" (Ex. 1388).

The International Union (UAW) commented that "[j]oint union-management methods of validating data through computerized systems have proven effective and can serve as a model for OSHA's modernization" (Ex. 1384). The American College of Occupational and Environmental Medicine (ACOEM) commented that OSHA should "increase medical record audits to assure accurate recordkeeping and reporting" and "increase the number of targeted inspections of companies deviating (positively or negatively) from the industry—norm incident and DART rates" (Ex. 1327). The American Federation of Teachers (AFT) provided similar comments (Ex. 1358).

The International Brotherhood of Teamsters commented that "OSHA may discuss [a quality assurance and audit program] with other government agencies that may have such programs. They would include FMCSA (SMS), MSHA and FRA, but could include other government agencies that receive electronic records as well" (Ex. 1381). Finally, the Coalition for Workplace Safety (CWS) commented that OSHA should implement "error screening and follow-back procedures to correct and/or verify questionable data reported" (Ex. 1411).

In response, OSHA plans to look at examples from other federal agencies. Two examples from the U.S. EPA are the Toxics Release Inventory (TRI) Program and the Greenhouse Gas Reporting Program. The TRI Program, which collects data from a wide range of facilities nationwide, takes steps to promote data quality, including analyzing data for potential errors, contacting TRI facilities concerning potentially inaccurate submissions, providing guidance on reporting requirements and, as necessary, taking enforcement actions against facilities that fail to comply with TRI requirements. For the Greenhouse Gas Reporting Program, quality assurance checks include evaluating submitted data against an extensive array of electronic checks that "flag" potential errors. For example, statistical checks are used to evaluate data from similar facilities and identify data that might be outliers. Also, algorithm checks consider the relationships between different pieces of entered information and compare the information to an expected value. These flags are then manually reviewed to assess the cause of the flag; if EPA finds a potential error, EPA follows up with the reporter. The GHGRP has given some consideration to conducting on-site audits of reporting facilities.

In addition, actions OSHA has taken in the past as part of data collection for the ODI included running programmed routines that checked establishment submissions and then, based on results, assigned a submission status code indicating whether the data submitted passed the edits and was considered usable or not usable. These routines were informed by routines the BLS used for the Survey of Occupational Injuries and Illnesses.

OSHA will form a working group with BLS to assess data quality, timeliness, accuracy, and public use of the collected data, as well as to align the collection with the BLS SOII.

Categories of Information That Are Useful To Publish

In the preamble to the proposed rule, OSHA asked, "Which categories of information, from which OSHA-required form, would it be useful to publish?" [78 FR 67271].

OSHA received many comments about the benefits that would result from publishing all of the information that OSHA collects, except for PII, including improved research and analysis of injury and illness trends, improved motivation for employers to provide safe workplaces, more information for employees and potential employees, more information for customers and the public, injury and illness prevention, and various other benefits.

For improved research and analysis of injury and illness trends, there were many comments that publication of this information would allow employers, workers, researchers, unions, and the public to improve workplace safety by providing the data for better research and analysis of injury and illness trends (Exs. 0245, 0254, 1110, 1203, 1207, 1208, 1219, 1278, 1345, 1350, 1354, 1371, 1380, 1381, 1387, 1388, 1393, 1395, 1424). For example, the United Food & Commercial Workers International Union (UFCW) commented that publication of data would "enable the public, unions, employees, and other employers to search and analyze the data. Further, by making the data available electronically from OSHA, interested parties can much more easily analyze trends, assess effective health and safety programs and track ongoing hazards by establishment, enterprise and industry" (Ex. 1345). Andrew Sutton provided a similar comment (Ex. 0245).

There were also comments that publication of this data would improve the occupational safety and health surveillance capacity of the United States. The Council of State and Territorial Epidemiologists (CSTE) commented that "OSHA's proposal to electronically collect and make available the data employers already record on work-related injuries and illnesses would substantially enhance occupational health surveillance capacity in the United States" (Ex. 1106). The California Department of Industrial Relations (DIR), Office of the Director provided a similar comment (Ex. 1395).

Several commenters also commented that publication of the data would particularly help with identifying emerging hazards (Exs. 1106, 1211, 1327, 1330, 1347, 1371, 1382). For example, the Council of State and Territorial Epidemiologists (CSTE) commented that publication of establishment-level data "has the potential to facilitate timely identification of emerging hazards. These include both new and newly recognized hazards. A relatively recent case example is illustrative. In 2010, the Michigan Fatality Assessment and Control Evaluation program identified three deaths associated with bath tub refinishing, raising new concern about hazards of chemical strippers used in this process . . . These findings led to the development of educational information about the hazards associated with tub refinishing and approaches to reducing risks that was disseminated nationwide to companies and workers in the industry" (Ex. 1106).

For increased motivation for employers to provide safer workplaces, there were several comments that publication of the data would allow companies to benchmark their safety and health performance against similar companies (Exs. 0241, 0245, 1106, 1126, 1278, 1327, 1341, 1358, 1371, 1381, 1387, 1393). For example, the American Industrial Hygiene Association (AIHA) commented that data publication "should also enable employers to benchmark against others in their industry. The sharing of statistics could also identify solid performers who might help others upgrade their processes and outcomes" (Ex. 1126). Senator Tom Harkin made a similar comment (Ex. 1371).

Michael Houlihan further commented that "the disclosure requirement may improve the performance of managers by drawing public attention to the illness and injury rates at their facilities" (Ex. 1219). Peter Strauss, Richard R, Sarah Wilensky, and Ashok Chandran provided similar comments (Exs. 0187, 1209, 1382, 1393).

For more information for employees and potential employees, there were multiple comments that publication of the data would allow employees to use the data to make better decisions about where to work (Exs. 0145, 1219, 1278, 1327, 1341, 1350, 1371, 1395). For example, Worksafe commented that "electronic posting by OSHA of information related to fatality and injury and illness incidents would allow individuals who may be considering employment to assess the types, severity, and frequency of injuries and illnesses of a particular firm or workplace" (Ex. 1278). Professor Sherry Brandt-Rauf of the School of Public Health at the University of Illinois at Chicago provided a similar comment (Ex. 1341).

Many commenters stated that data publication would be especially helpful because employees would be able to get safety and health data from their workplace anonymously and without fear of retaliation (Exs. 1188, 1211, 1278, 1345, 1381, 1387, 1388, 1393, 1424). For example, the Southern Poverty Law Center commented that "[e]ven an employee's simple request to view an OSHA 300 log *might* be met by an employer in a dangerous, low-wage industry such as poultry or meat processing with suspicion, threats, or even termination. Given these realities in many American workplaces, any steps the Department takes to increase workers' access to records about health and safety in their own workplaces will provide workers with better tools with which to protect their bodies and their lives" (Ex. 1388).

For more information for customers and the public, there were comments that publication of the data could help customers and the public decide whom to do business with (Exs. 0248, 1114, 1278, 1327, 1341, 1371, 1395). For example, Worksafe commented that "there are potential benefits for current or potential suppliers, contractors for, and purchasers of a firm's goods or services. These parties would have the opportunity to consider the information in their business decisions, such as how a supplier's injury and illness experience would reflect on their own business" (Ex. 1278). Senator Tom Harkin also commented that data publication "may be of use not just to the public, but also by contracting officers at federal agencies when assessing prospective contractors' safety performance" (Ex. 1371).

For prevention of workplace injuries and illnesses, NIOSH commented that "electronically-collected and stored injury and illness data can be an asset to establishments/employers for planning prevention intervention activities" (Ex. 0216). The AFL–CIO made a similar comment (Ex. 1350).

The New York States Nurses Association commented that "having this data and information would greatly improve the ability to research trends which may contribute to preventing and mitigating workplace violence injuries" (Ex. 0254). The AFL–CIO provided a similar comment (Ex. 1350). The United Food & Commercial Workers International Union (UFCW) emphasized the role that labor unions could play in such research, commenting that "[a]nalysis of the information can identify trends among and between companies, and at specific sites within one company . . . Plant management in one location may be using effective strategies that result in a decrease in injuries and illnesses; these effective strategies can be passed on to sister plants in the same company. By examining other establishments' OSHA injury and illness data for those without declining injury rates, the [UFCW] has been able to target areas for improved prevention strategies" (Ex. 1345). The Service Employees International Union (SEIU) provided a similar comment (Ex. 1387).

The California Department of Industrial Relations (DIR), Office of the Director commented that the proposed rule "would specifically help identify and abate workplace hazards by improving the surveillance of occupational injury and illness. Complete and accurate surveillance of occupational injury and illness is essential for informed policy decisions and for effective intervention and prevention programs" (Ex. 1395). The Council of State and Territorial Epidemiologists (CSTE) provided a similar comment (Ex. 1106).

There were also comments about various other benefits of data publication. Lancaster Safety Consulting, Inc. commented that "[o]nline access to the injury and illness data will provide a means for occupational safety and health (OSH) professionals to reach out to companies that are in apparent need of assistance with their OSH programs" (Ex. 0022). The Council of State and Territorial Epidemiologists (CSTE) and the International Brotherhood of Teamsters provided similar comments (Exs. 1106, 1381).

Several commenters commented that data publication would make it easier for labor unions to access safety and health data when representing workers (Exs. 0245, 1209, 1350, 1381, 1387, 1424). For example, the AFL–CIO commented that "[i]t will assist unions in their efforts to collect injury and illness information from employers to assess conditions in individual workplaces and across employers and industries where they represent workers. Many unions already collect this information under their rights of access under the recordkeeping rule. But currently, this information must be requested and collected establishment by establishment, making the collection and analysis of this data difficult and time consuming and hindering prevention efforts" (Ex. 1350). The Council of State and Territorial Epidemiologists (CSTE) commented about the benefits for community health planning, stating that "[t]he availability of establishment specific information also offers a potential opportunity to incorporate occupational health concerns in community health planning, which is increasingly providing the basis for setting community health and prevention priorities" (Ex. 1106). Finally, the International Brotherhood of Teamsters commented that "[g]iven the difficulties that both union and non-union workers face, and OSHA's inability to fully enforce the 1904 rules, the public release of the data is actually necessitated since it would allow workers to have a subsidiary role in "enforcing" those requirements" (Ex. 1381).

On the other hand, the Interstate Natural Gas Association of America commented the "[i]njury and illness data contained in 300–A Summaries is the only information that may be useful, but this information is limited" (Ex. 1206).

In response, OSHA agrees with the commenters above who commented that the benefits that would result from publishing all of the information that OSHA collects, except for PII, include improved research and analysis of injury and illness trends, improved motivation for employers to provide safe workplaces, more information for employees and potential employees, more information for customers and the public, and injury and illness prevention.

There were also many comments that publishing the data would not be beneficial for various reasons, including the misleading nature of the published data and a focus on lagging instead of leading indicators.

For the misleading nature of the published data, many commenters commented that the published data will be misleading because the data do not tell the whole story and do not provide any context (Exs. 0138, 0162, 0163, 0171, 0174, 0179, 0181, 0188, 0189, 0194, 0218, 0224, 0234, 0242, 0255, 0256, 0258, 1084, 1090, 1091, 1092, 1093, 1109, 1111, 1112, 1113, 1116, 1123, 1187, 1190, 1192, 1193, 1194, 1195, 1196, 1198, 1199, 1200, 1201, 1204, 1205, 1206, 1210, 1214, 1215, 1217, 1218, 1222, 1225, 1272, 1273, 1275, 1276, 1279, 1318, 1321, 1322, 1323, 1324, 1326, 1327, 1328, 1329, 1332, 1333, 1334, 1336, 1338, 1340, 1342, 1343, 1349, 1355, 1356, 1359, 1360, 1363, 1364, 1365, 1368, 1370, 1373, 1376, 1378, 1379, 1385, 1386, 1389, 1390, 1391, 1392, 1394, 1396, 1397, 1399, 1400, 1402, 1406, 1408, 1409, 1410, 1411, 1416, 1426).

For example, the Coalition for Workplace Safety (CWS) commented that "[t]he data that OSHA will collect and make publicly available is not a reliable measure of an employer's safety record or its efforts to promote a safe work environment. Many factors outside of an employer's control contribute to workplace accidents, and many injuries that have no bearing on an employer's safety program must be recorded. Data about a specific incident is meaningless without information about the employer's injuries and illness rates over time as compared to similarly sized companies in the same industry facing the same challenges (even similar companies in the same industry may face substantially different challenges with respect to workplace safety based on climate, topography, population density, workforce demographics, criminal activity in the region, proximity and quality of medical care, etc.)" (Ex. 1411). The National Association of Manufacturers (NAM) provided a similar comment (Ex. 1279).

Many commenters also commented on a related concern that OSHA should not publish the data since the public will misinterpret the data (Exs. 0027, 0143, 0152, 0159, 0160, 0189, 0197, 0210, 0211, 0218, 0224, 0239, 0240, 0242, 0251, 0253, 0255, 0256, 0258, 1084, 1090, 1091, 1092, 1093, 1109, 1111, 1112, 1113, 1123, 1124, 1125, 1191, 1192, 1194, 1197, 1199, 1200, 1205, 1210, 1214, 1215, 1217, 1218, 1224, 1225, 1272, 1273, 1275, 1276, 1279, 1322, 1326, 1327, 1329, 1332, 1333, 1334, 1336, 1338, 1340, 1343, 1344, 1359, 1368, 1370, 1372, 1379, 1389, 1391, 1396, 1397, 1399, 1400, 1408, 1410, 1413, 1415, 1416). For example, the American Foundry Society commented that "[t]he public . . . could take the injury and illness data out of context, as they would not be privy to the details behind the injuries, the safety measures employers adopt, or any other relevant information related to the circumstances of the injury or illness" (Ex. 1397). The Puget Sound Shipbuilders Association also commented that "[w]e are concerned about the level of knowledge and understanding the general public has about OSHA recordable cases and believe it is very limited" (Ex. 1379).

Finally, there were comments that recordkeeping data collected under the proposed rule would not improve workplace safety and health since they are lagging indicators (Exs. 0163, 0250, 1194, 1279, 1342, 1363, 1389, 1408, 1410) and that leading indicators are necessary to improve future workplace safety and health outcomes (Exs. 0027, 0053, 0162, 0163, 0197, 1204, 1279, 1331, 1339, 1342, 1363, 1389, 1406, 1408, 1410, 1416, 1417).

For example, the Mechanical Contractors Association of America (MCAA) commented that "that lagging indicators, such as OSHA Incidence Rates, are poor indicators of safety performance. Many occupational safety and health professionals share this belief. For example, The American National Standards Institute's (ANSI) A10 Construction and Demolition Operations Committee is currently working on a technical report to help educate government agencies, construction owners, and construction employers about the relative ineffectiveness of lagging indicators" (Ex. 1363). The National Association of Manufacturers made a similar comment (Ex. 1279).

The National Association of Home Builders (NAHB) commented that "[l]eading indicators measure what's happening right now and may be a better gauge of safety performance. The leading indicators attempt [to] measure safety performance by utilizing tools such as tracking safe or unsafe behaviors or workers, investigating near-miss incidents, performing workplace audits and inspections, and conducting safety training" (Ex. 1408).

The American Society of Safety Engineers (ASSE) commented that "ASSE and other leading safety and health organizations have put considerable work into developing resources and encouraging companies to move away from 'trailing' and towards 'leading' indicators for evaluating workplace safety. As OSHA itself knows, 'trailing' indicators focus an organization on safety after the fact of an injury or fatality. 'Leading' indicators better focus an organization on the best practices that prevent injuries and fatalities" (Ex. 1204). However, the Environmental, Health & Safety Communications Panel (EHSCP) commented that OSHA should promote "a balance of leading and lagging measures" to measure safety performance (Ex. 1331). The National Rural Electric Cooperative Association (NRECA) provided a similar comment (Ex. 1417).

Several commenters also commented that the proposed rule could harm workplace safety and health by shifting employers' focus from leading indicators to lagging indicators (Exs. 0027, 0157, 0163, 1109, 1124, 1194, 1204, 1372, 1389, 1406, 1408, 1410, 1416). For example, the American Society of Safety Engineers (ASSE) commented that "[p]ublic release of numbers and rates of injuries by establishment will cause many employers to use their resources to address 'trailing,' not 'leading' indicators . . . ASSE is concerned that this proposal, and the additional attention that a national database of injury rates and numbers will attract, works against the professions' [sic] years of effort in moving workplace safety towards 'leading' indicators" (Ex. 1204). The American Feed Industry Association made a similar comment (Ex. 1372).

In response, OSHA does not agree that the publishing of recordkeeping data under this final rule will be misleading or that the public will misinterpret the data. The recordkeeping data represent real injuries and illnesses (injuries and illnesses that required more than first aid) that occurred at the workplace and were recordable under part 1904. While they do not, by themselves, provide a complete picture of workplace safety and health at that workplace, employers are free to post their own materials to provide context and explain their workplace safety and health programs. In addition, when OSHA publishes the data, the Agency will provide links to resources, such as industry rates from BLS, to help the public put the information in context. OSHA will also include language explaining the definitions and limitations of the data, as OSHA has done since the Agency began publishing establishment-specific injury and illness data from the OSHA Data Initiative on its public Web site in 2009. For the published ODI data, OSHA has included the following explanatory note on data quality: "While OSHA takes multiple steps to ensure the data collected is accurate, problems and errors invariably exist for a small percentage of establishments. OSHA does not believe the data for the establishments with the highest rates on this file are accurate in absolute terms. Efforts were made during the collection cycle to correct submission errors, however some remain unresolved. It would be a mistake to say establishments with the highest rates on this file are the "most dangerous" or "worst" establishments in the Nation."

Similarly, OSHA does not agree that the part 1904 recordkeeping data will not improve workplace safety and health due to being lagging indicators instead of leading indicators. As stated above, the recordkeeping data represent real injuries and illnesses that occurred at the workplace and were recordable. In addition, as stated above, employers are free to post their own materials—including leading indicators—to provide context and explain their workplace safety and health programs. However, perhaps in a future rulemaking related to recordkeeping, OSHA might request information about leading indicators, including which leading indicators (if any) it would be most useful to add to the injury and illness records employers are required to keep under part 1904.

As discussed above, OSHA intends to make the data it collects public. The publication of specific data elements will in part be restricted by applicable federal law, including provisions under the Freedom of Information Act (FOIA), as well as specific provisions within part 1904. OSHA will make the following data from the various forms available in a searchable online database:

- *Form 300A (Annual Summary Form)*—All collected data fields will be made available. In the past, OSHA has collected these data under the ODI and during OSHA workplace inspections and released them in response to FOIA requests. The annual summary form is also posted at workplaces under § 1904.32(a)(4) and (b)(5). OSHA currently publishes establishment-specific injury and illness rates calculated from the data collected through the ODI on OSHA's public Web site at *http://www.osha.gov/pls/odi/establishment_search.html*. The 300A annual summary does not contain any personally-identifiable information.
- *Form 300 (the Log)*—All collected data fields on the 300 Log will generally be made available on the Web site. Employee names will not be collected. OSHA occasionally collects these data during inspections as part of the enforcement case file. OSHA generally releases these data in response to FOIA requests. Also, § 1904.29(b)(10) prohibits release of employees' names and personal identifiers contained in the forms to individuals other than the government, employees, former employees, and authorized representatives. OSHA does not currently conduct a systematic collection of the information on the 300 Log.
- *Form 301 (Incident Report)*—All collected data fields on the right-hand side of the form (Fields 10 through 18) will generally be made available. The Agency currently occasionally collects the form for enforcement case files. OSHA generally releases these data in response to FOIA requests. Section 1904.35(b)(2)(v)(B) prohibits employers from releasing the information in Fields 1 through 9 (the left-hand side of the form) to individuals other than the employee or former employee who suffered the injury or illness and his or her personal representatives. Similarly, OSHA will not publish establishment-specific data from the left side of Form 301. OSHA does not release data from Fields 1 through 9 in response to FOIA requests. The Agency does not currently conduct a systematic collection of the information on the Form 301. However, the Agency does review the entire Form 301 during some workplace inspections and occasionally collects the form for inclusion in the enforcement case file. Note that OSHA will not collect or publish Field 1 (employee name), Field 2 (employee address), Field 6 (name of treating physician or health care provider), or Field 7 (name and address of non-workplace treating facility).

Helping Employers, Employees, and Potential Employees Use the Collected Data

In the preamble to the proposed rule, OSHA asked, "What analytical tools could be developed and provided to employers to increase their ability to effectively use the injury and illness data they submit electronically?" [78 FR 67271].

There were several comments about analytical tools that could be developed and provided to employers to increase their ability to effectively use the injury and illness data they submit electronically. NIOSH commented about their current pilot project that provides employers with a tool to analyze their safety and health data, stating, "NIOSH developed a web-portal and information system that accepts traumatic injury data electronically, including the fields/characteristics recorded on OSHA Form 300 . . . Participating establishments send all data voluntarily. The system does not accept personal data. Establishments are not identified and comparison data are in aggregate form. After receipt, the data undergo quality checks and are uploaded to an analyzable database that is available to the establishment via the web-portal in seven to 10 days. The establishment can use the online system to examine its injury patterns over time and to compare its rates with other establishments by size, region, type, and other variables. In addition, the system provides users with information on best practices for the industry, injury-reduction interventions, and other up-to-date health and safety information" (Ex. 0216). The American College of Occupational and Environmental Medicine (ACOEM) also commented about the desirability of a tool similar to the one that NIOSH is piloting (Ex. 1327).

The International Brotherhood of Teamsters commented that "two of our employers use injury/illness tracking systems to collect and record all OSHA-recordable occupational injuries/illnesses. We would encourage OSHA to provide tools that would bolster and enhance employer efforts aimed at preventing injuries and illnesses. These tools could be useful to our membership as well, especially at establishments that have joint labor- management health and safety committees" (Ex. 1381).

The International Association of Industrial Accident Boards and Commissions (IAIABC) commented that if OSHA "adopts an electronic reporting requirement, the IAIABC urges OSHA to consider the benefits of using the IAIABC's established First and Subsequent Reports of Injury Standard (IAIABC EDI Claims Standard). Implementation of an existing electronic standard would be much faster and easier than developing a brand new electronic reporting protocol. The IAIABC EDI Claims Standard fully supports differing types of transactions including new reports, updates/corrections to previous submissions, and even has the capacity to limit what data can be modified after it has been submitted. Furthermore, the IAIABC EDI Claims Standard includes an 'upon request' type of report which OSHA has indicated a potential need to support" (Ex. 1104).

In response, OSHA notes that, in 2011, IAIABC and NIOSH signed a memorandum of understanding that outlined opportunities for collaboration, including utilizing workers' compensation data to identify emerging issues and trends in occupational safety and health. In addition, EPA's Toxics Release Inventory (TRI) Program provides a range of analytical tools that include the TRI Pollution Prevention (P2) Tool (users can explore and compare facility and parent company information on the management of toxic chemical waste, including facilities' waste management practices and trends); TRI.NET (with this desktop application, users can build customized TRI data queries, then map results and overlay other data layers); and Envirofacts (an online tool that provides access to all publicly available TRI data in a searchable, downloadable format). Related analytical tools that make use of TRI data include the DMR Pollutant Loading Tool (users can determine what pollutants are being discharged into waterways and by which companies, and can compare DMR data search results against TRI data search results) and Enviromapper (users can generate maps that contain environmental information, including TRI information). Similarly, EPA's GHGRP provides a number of online tools for mapping, charting, comparing, and otherwise analyzing facility reported data.

OSHA is considering including reporting capabilities in future versions of the data collection system, so that employers can view useful outputs from their submitted data (*e.g.*, data visualizations of trends, data table displays, reports with summary counts and statistics). The intention, in part, will be to encourage employers to consider injury/illness trends at or across their establishment(s), so they can abate hazards without prompting by an OSHA intervention.

In the preamble to the proposed rule, OSHA also asked, "How can OSHA help employees and potential employees use the data collected under this proposed rule?" [78 FR 67271].

There were various comments about how OSHA could help employees and potential employees use the data collected under this rule. Many commenters supported provision of the data in a way that allows for easy analysis of the information. For example, the California Department of Industrial Relations (DIR), Office of the Director commented that "data sharing needs to be timely, user-friendly, user-accessible, and searchable by common fields including geography (ideally to county level or smaller), employer, and industry. Industry codes should be uniform and up-to-date. Posted data should ensure entity resolution and easy searching by establishment name. Multiple establishments that are the same company should be identifiable as a single company. Employees, employers, researchers, and community members all have different uses for the data, and each should be taken into account. The underlying data (once cleaned of personally identifiable information) should be downloadable (similar to American Fact Finder) for manipulation and statistical calculations" (Ex. 1395). The AFL–CIO, Senator Tom Harkin, Change to Win, the Service Employees International Union (SEIU), and the United Steelworkers provided similar comments (Exs. 1350, 1371, 1380, 1387, 1424).

Senator Harkin also commented that OSHA's "sister agency the Mine Safety and Health Administration (MSHA), along with other agencies like the Federal Railroad Administration (FRA) and Federal Aviation Administration (FAA), currently publish establishment-specific accident and injury and illness data. We believe that OSHA should consult with these agencies to learn about design problems and potential best practices to adopt before creating its database" (Ex. 1371). The Service Employees International Union (SEIU) provided a similar comment (Ex. 1387).

Other commenters had other ideas. For example, the Council of State and Territorial Epidemiologists (CSTE) commented that "[s]tandardized feedback to establishments and potential reports of establishment specific data could be programmed that would promote use of the data by employers and workers to set health and safety priorities and monitor progress in reducing workplace risks" (Ex. 1106).

The Building and Construction Trades Department, AFL–CIO commented that "the data should be organized and made available in different formats for different data users. For example, an individual employee may be interested in the establishment for which he/she works, while a researcher is more likely to get statistics in general. Therefore, the new data collection should include multiple levels of data access to meet different needs" (Ex. 1346).

In response, when OSHA develops the publicly-accessible Web site, the Agency will make the raw data available in multiple formats (after it has been scrubbed of PII) for use by employers, employees, researchers, and the public in evaluating opportunities to address workplace safety and health. The Agency may also provide reporting and analytics tools for employers to view useful outputs from their submitted data (*e.g.*, data visualizations of trends, data table displays, reports with summary counts and statistics). The intention, in part, will be to encourage employers to consider injury/illness trends at or across their establishment(s), so they can abate hazards without prompting by an OSHA intervention. The Agency plans to provide similar tools on the public Web site so that the data will be more useful and accessible to members of the public who may not need or want to download data and perform their own analysis.

Helping Small-Business Employers Comply With Electronic Data Submission Requirements

In the preamble to the proposed rule, OSHA asked, "How can OSHA help employers, especially small-business employers, to comply with the requirements of electronic data submission of their injury and illness records? Would training help, and if so, what kind?" [78 FR 67271].

There were five major issues addressed by commenters about how to help small employers comply with electronic data submission requirements: General characteristics of a system that would help small-business employers comply with electronic data submission requirements; capability for immediate feedback; connecting the recordkeeping system with the reporting system; training and outreach; and third-party capability.

For general characteristics, several commenters commented that careful overall design of its Web site and other technical support could help employers, especially small-business employers, comply with the requirements of electronic data submission. The Phylmar Regulatory Roundtable (PRR) commented that "the 'user friendliness' of the Web site will be the key to success for this electronic data submission program. It should have an extensive and strong help menu, as well as a go-to phone number (as is currently provided in the BLS data request) for help with the system. A universal data language must be provided (*e.g.*, XML) so that regardless of the platform used for recordkeeping, the information may easily be uploaded to OSHA's Web site. OSHA's system must have sufficient capacity and be robust enough to handle the massive quantities of data that 580,000 employers will be submitting within roughly the same time frame" (Ex. 1110). The American Subcontractors Association provided a similar comment (Ex. 1322).

For immediate feedback after data submission, the Dow Chemical Company commented that "OSHA is proposing to require electronic reporting by strict deadlines. It is therefore vitally important for employers to receive immediate feedback as to whether their data entry was successful or unsuccessful. OSHA's web portal should respond to each and every attempt at data entry, by providing a confirmation of receipt or a confirmation of failure. The confirmation notice should describe what was received (or not received) with sufficient detail to be useful in resolving disputes in an enforcement context" (Ex. 1189). The Phylmar Regulatory Roundtable (PRR) provided a similar comment (Ex. 1110).

For connecting the recordkeeping and reporting systems, the AFL–CIO commented that "[t]o assist smaller employers in reporting workplace injury and illness data electronically, it would helpful for OSHA to provide basic software for workplace injury and illness recordkeeping from which the data can be easily uploaded/reported to OSHA through a secure Web site as OSHA envisions" (Ex. 1350). Ashok Chandran provided a similar comment, suggesting that OSHA provide "a mobile application that employers could use to submit their records" and "a web portal that allows employers to enter data directly" (Ex. 1393).

For outreach and training, the Allied Universal Corporation commented that "OSHA should also develop a training program [about the requirements of electronic data submission], hosting webinars or similar events across the United States and reach out to many trade associations" (Ex. 1192). The International Association of Industrial Accident Boards and Commissions (IAIABC) and the American Subcontractors Association (ASA) provided similar comments (Exs. 1104, 1322).

Other commenters commented that training on current OSHA requirements would also be helpful. The California Department of Industrial Relations (DIR), Office of the Director commented that "many employers could benefit from outreach and education on how and what to report, including reference to 29 CFR 1904.31, employees covered by the OSHA recordkeeping standard" (Ex. 1395). The Associated General Contractors of America (AGC) provided a similar comment (Ex. 1416).

For third-party capability, Veriforce also commented that third-party electronic submission capabilities could be helpful for employers. They commented that pipeline industry contractors could be helped if "3rd party companies with contractor permission [could] electronically upload [the contractor's] data into the new OSHA Injuries and Illnesses reporting Web site[.] It will become more difficult for contractors to have to continue to report electronically to 3rd party companies and then now have to enter the same information into this new OSHA system when the 3rd party companies which have a contract with the contractor can just electronically forward the information to the this new OSHA Web site" (Ex. 0243).

In addition to the comments related to the five major issues, some commenters commented with other ideas about how OSHA could help small-business employers comply with the new requirements. The United Food & Commercial Workers International Union (UFCW) commented that they support "making the new reporting requirements as simple as possible . . . In the UFCW's experience, keeping the requests as simple as possible for all of our employers (including those who fall into the smaller business category), results in greater data acquisition" (Ex. 1345). In addition, some commenters included comments about a phase-in period being helpful to employers, which were addressed above in comments to Alternatives C and D (Exs. 0210, 1104, 1322, 1401).

In response to these comments, when OSHA develops the data collection system, the Agency will make every effort to ensure ease of use with small-business employers in mind. To the extent possible, features will be incorporated to minimize the number of keystrokes and mouse-clicks required to complete a form (*e.g.*, pick-lists and widgets). Also, forms will be programmed to prefill establishment information where appropriate (*e.g.*, establishment name and address from registration or prior submissions) as well as to auto-calculate and/or carry totals over from associated forms (*e.g.*, Form 300 column totals will auto-calculate and be programmed to pre-populate Form 300A). Additional functionality will be provided to help avoid some types of entry errors, (*e.g.*, if column G [death] is selected, then disable controls for columns K [away from work] and L [on job transfer/restriction]).

In addition, OSHA plans to incorporate as many helper features as possible (*e.g.* help text, instruction sheets, etc.) to guide users through the data submission process. This information will be readily accessible from the collection system. Further, OSHA plans to implement an email/phone help line for providing quick-response user support.

For third-party capability, if a small business, for instance, enlists a third-party (*e.g.*, a consultant) to act as its representative in submitting its injury/illness information to OSHA's data collection system, the third-party would also provide their own contact information on the submission system as a representative of the business.

Finally, OSHA will phase in implementation of the data collection system. In the first year, all establishments required to routinely submit information under the final rule will be required to submit only the information from the Form 300A (by July 1, 2017). In the second year, all establishments required to routinely submit under the final rule will be required to submit all of the required information (by July 1, 2018). This means that, in the second year, establishments with 250 or more employees that are required to routinely submit information under the final rule will be responsible for submitting information from the Forms 300, 301, and 300A. In the third year, all establishments required to routinely submit under this final rule will be required to submit all of the required information (by March 2, 2019). This means that beginning in the third year (2019), establishments with 250 or more employees will be responsible for submitting information from the Forms 300, 301, and 300A, and establishments with 20–249 employees in an industry listed in appendix A to subpart E of part 1904 will be responsible for submitting information from the Form 300A by March 2 each year. This will provide sufficient time to ensure comprehensive outreach and compliance assistance in advance of implementation.

Scope of Data Collection

In the preamble to the proposed rule, OSHA asked, "Should this data collection be limited to the records required under Part 1904? Are there other required OSHA records that could be collected and made available to the public in order to improve workplace safety and health?" [78 FR 67271].

Some commenters commented that OSHA should limit this rule to the collection of part 1904 data while making the rule flexible enough to allow for the collection of other information in the future. For example, the International Brotherhood of Teamsters commented that "[t]his rule should be limited to the 1904 data. However, OSHA should consider making this rule flexible enough to allow it to require reporting the other kinds of information in the future, particularly specific records (such as employee exposure data) that are already required by various OSHA standards. This would provide a better measure/indication of health risks faced by workers. In addition, OSHA may also wish to require employers to report other records currently mandated under other existing OSHA standards, such as employer reports of incidents investigated under the Process Safety Management (PSM) standard. The system should be designed to accommodate such expansions in the future" (Ex. 1381). Change to Win and the International Union (UAW) provided similar comments (Exs. 1380, 1384).

The American College of Occupational and Environmental Medicine (ACOEM) also commented about the collection of more data in the future, stating that "[OSHA should] collaborate with the Bureau of Labor Statistics and The Council for State and Territorial Epidemiologists to publicize a broader suite of occupational health indicators, which, taken together, would provide a better picture of the true burden of occupational safety and health in the United States" (Ex. 1327).

However, the Phylmar Regulatory Roundtable (PRR) commented that "data collection should be limited to the records required under Part 1904" (Ex. 1110).

OSHA agrees that the scope of the final rule should be the same as the scope of the proposed rule and include only the records required under part 1904. While OSHA notes some advantages for the collection of other data, the Agency believes that it did not receive enough information on this issue during this rulemaking to include such a requirement in the final rule. However, OSHA is open to considering additional data collection ideas for future rulemakings.

OSHA's Statutory Authority To Promulgate This Final Rule

Several commenters stated that OSHA lacks the statutory authority under the OSH Act to make raw injury and illness data available to the general public (Exs. 0218, 0224, 0240, 1084, 1093, 1123, 1198, 1218, 1225, 1272, 1279, 1332, 1336, 1342, 1344, 1356, 1359, 1360, 1372, 1385, 1393, 1394, 1396, 1404, 1408, 1411, 1412). These commenters acknowledged that Sections 8 and 24 of the OSH Act provide the Secretary of Labor with authority to issue regulations requiring employers to maintain accurate records of work-related injuries and illnesses. However, according to these commenters, nothing in the OSH Act authorizes OSHA to publish establishment-specific injury and illness records outside the employer's own workplace.

The U.S. Chamber of Commerce commented:

> A fundamental axiom of the regulatory process is that an agency must have statutory authority for any rule which it wishes to promulgate. *See, Am Library Ass'n* v. *FCC,* 406 F.3d 689, 708 (D.C. Cir. 2005) . . . OSHA has stated that it has authority for this Proposed Rule under sections 8 (c)(1), (c)(2), (g)(2) and 24 of the . . . OSH Act . . . None of these sections, however, provide OSHA with the statutory authority required to promulgate this Proposed Rule.
>
> Each of these sections upon which OSHA relies states that the information that OSHA is empowered to collect is for the use of the Secretary of Labor and the Secretary of Health and Human Services . . . Conspicuously absent from these provisions is any mention, let alone express or implied authority, that OSHA may create an online database meant for the public dissemination of an employer's injury and illness records containing confidential and proprietary information. Had Congress envisioned or intended that the Secretary of Labor would have the authority to publish this information it surely would have so provided. But of course, it did not and has not. (Ex. 1396)

The National Association of Manufacturers commented that Section 8(g)(1) of the OSH Act specifically and uniquely limits the information OSHA may publish to information that is "'compiled and analyzed.' This does not mean that OSHA can publish raw data from employer injury and illness records, but rather that it can compile information, analyze it, and then publish its analysis of the information in either summary or detailed form" (Ex. 1279).

NAM also commented that while the OSH Act does explicitly give OSHA the authority to release some information, the Act does not expressly permit the public release of recordkeeping data:

> Section 8(c)(2) merely grants the Secretary the authority to promulgate regulations requiring employers to maintain injury and illness records. Nothing in this section expressly grants authority for the public dissemination of such information. 29 U.S.C. 657(c).
>
> Moreover, had Congress intended to make such information available to the public they know how to do so. In various other sections of the OSH Act Congress explicitly granted authority requiring that other types of records be made available to the public. For example, section 12(g) requires the U.S. Occupational Safety and Health Review Commission records to be made publicly available. 29 U.S.C. 661(g). *U.S.* v. *Doig,* 950 F.2d 411, 414–15 (1991) ("Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion") (internal citation omitted). (Ex. 1279).

In contrast, several commenters stated that the OSH Act does provide OSHA with authority to issue this final rule (Exs. 1208, 1209, 1211, 1219, 1371, 1382, 1424). Specifically, OSHA received comments from four members of Congress on this issue. A letter signed by Senator Tom Harkin, Senator Robert Casey, Representative George Miller, and Representative Joe Courtney stated:

> When Congress passed the OSH Act, it expressly stated that the purpose of the law was 'to assure so far as possible every working man and woman in the Nation safe and healthful working conditions.' 29 U.S.C. 651(b). In order to effectuate this purpose, the Secretary of Labor was given the authority to issue regulations 'requiring employers to maintain accurate records of, and to make periodic reports on, work-related deaths, injuries and illnesses.' 29 U.S.C. 657(c)(2). Additionally, the Secretary 'shall develop and maintain an effective program of collection, compilation, and analysis of occupational safety and health statistics.' 29 U.S.C. 673(a).
>
> It is clear from the plain language of the OSH Act that Congress intended for OSHA to acquire and maintain accurate records from employers regarding workplace injuries and illnesses for the purpose of protecting workers' safety and health. This proposed rule not only improves upon the current system of reporting and tracking injuries and illnesses, it further strengthens the ability of OSHA to live up to its statutory mandate to ensure that workers have healthy and safe workplaces . . .
>
> We agree with OSHA's proposal to post reported injury and illness data online so that employees, employers, researchers, consumers, government agencies, and other interested parties have easy access to that important information. This increased access to injury and illness data will allow employers to measure themselves against other employers' safety records so they know when they need to make improvements. Employees will similarly have greater knowledge about the hazards in their workplace and their employer's previous health and safety history . . . (Ex. 1371).

Additionally, Ashok Chandran commented, "The proposed regulation in no way expands the substantive information employers must provide to OSHA. 29 CFR 1904 already requires employers to report injuries resulting in death, loss of consciousness, days away from work, restriction of work, transfer to another job, medical treatment other than first aid, or diagnosis of a significant injury or illness by a physician or other licensed health care professional. For over 40 years now, OSHA has been collecting injury reports without incident. Thus any challenges to the legality of this data collection must fail" (Ex. 1393).

OSHA believes that the OSH Act provides statutory authority for OSHA to issue this final rule. As explained in the Legal Authority section of this preamble, the following provisions of the OSH Act give the Secretary of Labor broad authority to issue regulations that address the recording and reporting of occupational injuries and illnesses.

Section 2(b)(12) of the Act states that one of the purposes of the OSH Act is to "assure so far as possible . . . safe and healthful working conditions . . . by providing for appropriate reporting procedures . . . which will help achieve the objective of th[e] Act and accurately describe the nature of the occupational safety and health problem." 29 U.S.C. 651(b)(12).

Section 8(c)(1) requires each employer to "make, keep and preserve, and make available to the Secretary . . . such records . . . prescribe[d] by regulation as necessary or appropriate for the enforcement of th[e] Act or for developing information regarding the causes and prevention of occupational accidents and illnesses." 29 U.S.C. 657(c)(1). The authorization to the Secretary to prescribe such recordkeeping regulations as he considers "necessary or appropriate" emphasizes the breadth of the Secretary's discretion in implementing the OSH Act. Section 8(c)(2) further provides that the "Secretary . . . shall prescribe regulations requiring employers to maintain accurate records of, and to make periodic reports on, work-related deaths, injuries and illnesses." 29 U.S.C. 657(c)(2).

Section 8(g)(1) authorizes the Secretary "to compile, analyze, and publish, whether in summary or detailed form, all reports or information obtained under this section." Section 8(g)(2) of the Act generally empowers the Secretary "to prescribe such rules and regulations as he may deem necessary to carry out his responsibilities under th[e] Act." 29 U.S.C. 657(g)(2).

Section 24 contains a similar grant of regulatory authority. Section 24(a) states that "the Secretary . . . shall develop and maintain an effective program of collection, compilation and analysis of occupational safety and health statistics . . . [and] shall compile accurate statistics on work injuries and illnesses." 29 U.S.C. 673(a). Section 24(e) provides that "[o]n the basis of the records made and kept pursuant to section 8(c) of th[e] Act, employers shall file such reports with the Secretary as he shall prescribe by regulation, as necessary to carry out his functions under th[e] Act." 29 U.S.C. 673(e).

OSHA has made the determination that the provisions in this final rule requiring electronic submission and publication of injury and illness recordkeeping data are "necessary and appropriate" for the enforcement of the OSH Act and for gathering information regarding the causes or prevention of occupational accidents or illnesses. Where an agency is authorized to prescribe regulations "necessary" to implement a statutory provision or purpose, a regulation promulgated under such authority is valid "so long it is reasonably related to the enabling legislation." *Morning* v. *Family Publication Service, Inc.*, 441 U.S. 356, 359 (1973).

The Supreme Court recognizes a "familiar canon of statutory construction that remedial legislation should be construed broadly to effectuate its purposes." *Tcherepnin* v. *Knight*, 389 U.S. 332, 336 (1967). And reading the statute in light of its protective purposes further supports the Secretary's interpretation that the Act calls for electronic submission and publication of injury and illness recordkeeping data. *See, e.g., United States* v. *Advance Mach. Co.*, 547 F.Supp. 1085 (D.Minn. 1982) (requirement in Consumer Product Safety Act to "immediately inform" the government of product defects is read as creating a continuing obligation to report because any other reading would frustrate the statute's goal of protecting the public from hazards). In addition, injury and illness records "are a cornerstone of the Act and play a crucial role in providing the information necessary to make workplaces safer and healthier." *Sec'y of Labor* v. *Gen. Motors Corp.*, 8 BNA OSHC 2036, 2041 (Rev. Comm'n 1980).

OSHA notes that not only are such recordkeeping regulations expressly called for by the language of Sections 8 and 24, but they are also consistent with Congressional intent and the purpose of the OSH Act. The legislative history of the OSH Act reflects Congress' concern about harm resulting to employees in workplaces with incomplete records of occupational injuries and illnesses. Most notably, a report of the Senate Committee on Labor and Public Welfare stated that "[F]ull and accurate information is a precondition for meaningful administration of an occupational safety and health program." S. Rep. No. 91–1282, at 16 (1970), *reprinted in* Subcomm. on Labor of the Comm. on Labor and Public Welfare, Legislative History of the Occupational Safety and Health Act of 1970, at 156 (1971). Additionally, a report from the House of Representatives shows that Congress recognized "comprehensive [injury and illness] reporting" as playing a key role in "effective safety programs." H.R. Rep. No. 91–1291, at 15 (1970), *reprinted in Subcomm. on Labor of the Comm. on Labor and Public Welfare, Legislative History of the Occupational Safety and Health Act of 1970*, at 845 (1971). As explained elsewhere in this preamble, the electronic submission and publication requirements of the final rule will lead to more accurate and complete occupational injury and illness records.

OSHA further notes that, contrary to comments made by some commenters, and as explained elsewhere in this preamble, the final rule will not result in the publication of raw injury and illness recordkeeping data or the release of records containing personally identifiable information or confidential commercial and/or proprietary information. The release or publication of submitted injury and illness recordkeeping data will be conducted in accordance with applicable federal law. (*See* discussion below).

Constitutional Issues

The First Amendment

Some commenters stated that the proposed rule would violate the First Amendment of the U.S. Constitution because it would force employers to submit their confidential and proprietary information for publication on a publicly available government online database (Exs. 1360, 1396). These commenters noted that the First Amendment protects both the right to speak and the right to refrain from speaking.

The U.S. Chamber of Commerce commented:

> While OSHA's stated goal of using the information it collects from employers "to improve workplace safety and health," 78 FR at 67,254, is unobjectionable, "significant encroachments on First Amendment rights of the sort that compelled disclosure imposes cannot be justified by a mere showing of some legitimate governmental interest." *Buckley* v. *Valeo*, 424 U.S. 1, 64 (1976) (per curiam). Instead, where the government seeks to require companies to engage in the type of speech proposed here, the regulation must meet the higher standard of strict scrutiny: Meaning that it must be narrowly tailored to promote a compelling governmental interest. *See United States* v. *Playboy Entm't Grp., Inc.*, 529 U.S. 803, 819 (2000).
>
> Once subjected to strict scrutiny, the publication provision of this Proposed Rule must fail because it is not narrowly tailored towards accomplishing a compelling government interest. *See Playboy*, 529 U.S. at 819. Under the narrow tailoring prong of this analysis, the regulation must be *necessary* towards accomplishing the government's interest. *See, e.g., Republican Party of Minn.* v. *White*, 536 U.S. 765, 775 (2002) ("[T]o show that the [requirement] is narrowly tailored, [the government] must demonstrate that it does not 'unnecessarily circumscrib[e] protected expression.'" (fourth alteration in original) (quoting *Brown* v. *Hartlage*, 456 U.S. 45, 54 (1982))).

On the other hand, Logan Gowdey commented that recordkeeping data has been collected by OSHA in the past through the OSHA Data Initiative (ODI).

He adds, "Furthermore, if there were a realistic claim to be made of First Amendment grounds, it surely would have been made against the EPA in relation to the Toxic Release Inventory (TRI) program, where toxic releases are published and include business names, far more 'speech' than will be required under this rule." (Ex. 1211).

In response, OSHA disagrees with the Chamber's comment that this rulemaking violates the First Amendment. OSHA notes that, contrary to the Chamber's comment, the decision in *Buckley* v. *Valeo* only applies to campaign contribution disclosures, and does not hold that other types of disclosure rules are subject to the strict scrutiny standard. *See,* 42 U.S. 1, 64 (reasoning that campaign contribution disclosures "can seriously infringe on privacy of association and belief guaranteed by the First Amendment"). Later cases also clarify that disclosure requirements only trigger strict scrutiny "in the electoral context." *See, John Doe No. 1* v. *Reed,* 561 U.S. 186, 196 (2010).

In *Zauderer* v. *Office of Disciplinary Counsel,* 471 U.S. 626, 653 (1985), the Supreme Court upheld Ohio state rules requiring disclosures in attorney advertising relating to client liability for court costs. The Court declined to apply the more rigorous strict scrutiny standard, because the government was not attempting to "prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein." 471 U.S. 626, 651. Because it concluded the disclosure at issue would convey "purely factual and uncontroversial information," the rule only needed to be "reasonably related to the State's interest in preventing deception of consumers." *Id.* Recently, in *American Meat Institute* v. *U.S. Dept. of Agriculture,* the U.S. Court of Appeals for the DC Circuit held that the *Zauderer* case's "reasonably related" test is not limited to rules aimed at preventing consumer deception, and applies to other disclosure rules dealing with "purely factual and uncontroversial information." 760 F.3d 18, 22 (D.C. Cir. 2014) (finding that the speakers' interest in non-disclosure of such information is "minimal"); *see also NY State Restaurant Ass'n* v. *NYC Bd. Of Health,* 556 F.3d 114, 133 (2d Cir. 2009) (accord), *Pharmaceutical Care Mgmt. Ass'n* v. *Rowe,* 429 F.3d 294, 310 (1st Cir. 2005) (accord).

This final rule only requires disclosure of purely factual and uncontroversial workplace injury and illness records that are already kept by employers. The rule does not violate the First Amendment because disclosure of workplace injury and illness records is reasonably related to the government's interest in assuring "so far as possible every working man and woman in the Nation safe and healthful working conditions." 29 U.S.C. 651(b). The remainder of the Chamber's comment deals with "essential rights" that do not encompass an employer's minimal interest in non-disclosure of purely factual and uncontroversial information.

The Fourth Amendment

The U.S. Chamber of Commerce commented that, while OSHA addressed some issues related to the Fourth Amendment to the U.S. Constitution in the preamble to the proposed rule, the Agency neglected to consider other issues. Specifically, the Chamber stated that:

> The Notice for this Proposed Rule cites several cases that OSHA asserts confirm that the requirement to report injury and illness records comports with the Fourth Amendment's prohibition against unreasonable searches and seizures. 78 FR at 67,255–56. In making this preemptive defense, however, OSHA has neglected to address the more pressing Fourth Amendment problem with this Proposed Rule: That OSHA's use of the information collected for enforcement purposes will fail to constitute a "neutral administrative scheme" and will thus violate the Supreme Court's holding in *Marshall* v. *Barlow's Inc.,* 436 U.S. 307 (1978).

Additionally, the Chamber stated that the raw data to be collected under the proposed rule would fail to provide any defensible neutral predicate for enforcement decisions: "Under this Proposed Rule, OSHA will be able to target any employer that submits a reportable injury or illness for any reason the agency chooses, or for no reason at all, under this unlimited discretion it has sought to grant itself to 'identify workplaces where workers are at great risk'" *See,* 78 FR 67,256." (Ex. 1396).

In response, OSHA notes that *Barlow's* concerned the question of whether OSHA must have a warrant to inspect a worksite if the employer does not give consent. Section 1904.41 of this final rule involves electronic submission of injury and illness recordkeeping data; no entry of premises or compliance officer decision-making is involved. Thus, the *Barlow's* decision provides very little support for the commenter's sweeping Fourth Amendment objections. *See, Donovan* v. *Lone Steer, Inc.,* 464 U.S. 408, 414 (1984) (reasonableness of a subpoena is not to be determined on the basis of physical entry law, because subpoena requests for information involve no entry into nonpublic areas).

Moreover, the final rule is limited in scope and leaves OSHA with limited discretion. The recordkeeping information required to be submitted is highly relevant to accomplishing OSHA's mission. The submission of recordkeeping data is accomplished through remote electronic transmittal, without any intrusion of the employer's premises by OSHA, and is not unduly burdensome. Also, all of the injury and illness information required to be submitted is taken from records employers are already required to create, maintain, post, and provide to employees, employee representatives, and government officials upon request, which means the employer has a reduced expectation of privacy in the information.

With respect to the issue of enforcement, OSHA disagrees with the Chamber's Fourth Amendment objection that the Agency will target employers "for any reason" simply because they submit injury and illness data. Instead, OSHA plans to continue the practice of using a neutral-based scheme for identifying industries for closer inspection. More specifically, the Agency will use the data submitted by employers under this final rule in the same manner OSHA has used data from the ODI over the last 15 years. In the past, OSHA's Site-Specific Targeting (SST) program and Nursing Home and Recordkeeping National Emphasis Programs (NEPs) all used establishment-specific injury and illness rates as selection criteria for inspection. In the future, OSHA plans to analyze the recordkeeping data submitted by employers to identify injury and illness trends and make appropriate decisions regarding enforcement efforts.

OSHA also notes that the Agency currently uses establishment-specific fatality, injury, and illness reports submitted by employers under Section 1904.39 to target enforcement and compliance assistance resources. As with the SST and NEP programs, a neutral-based scheme is used to identify which establishments are inspected and which fall under a compliance assistance program. Accordingly, OSHA's targeting of employers for inspection will not be arbitrary or unconstitutional under the Fourth Amendment.

Due Process

Two commenters raised concerns about the proposed rule potentially violating an employer's due process protection under the Fifth Amendment of the U.S. Constitution. (Exs. 0245, 1360). Andrew Sutton commented "There is the possibility of a substantial due process claim lurking here. It is long settled law that "where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential. *Wisconsin* v. *Constantineau,* 400 U.S. 433, 437 (1971). But whether the same due process protections are warranted when government action threatens a business' goodwill is less clear" (Ex. 0245).

The International Warehouse Logistics Association commented that the proposed rule would deny their members the right to due process:

> Citations will no doubt be issued under this standard for failures to report arguably work related injuries and illnesses accurately. Since the data reported will be published by OSHA, there will be a presumption of guilt attached to those injury reports. The proposed rulemaking acknowledges that this reporting may result in prospective employees and customers shunning businesses who report injuries and illnesses, so clearly the Department contemplates that the reported injuries create a presumption of guilt. Therefore, in every case where the employer is faced with an injury or illness that is not *clearly* recordable—and that is often the case—OSHA will violate an employer's right to due process under the Fifth Amendment of the United States Constitution. This violation of employer due process rights will result from the mandatory recording of injuries and illnesses within six days of their occurrence and their subsequent mandatory electronic reporting. The employer will be subjected to citation for failing to report questionable alleged injuries and illnesses, on the one hand, and will face the prospect of losing customers by reporting, on the other. Given the prospect of the reported injury and illness data being published by OSHA, the proposed rule does not provide a reasonable time frame for the employer to conduct an adequate evaluation of its legal obligations and exposures with respect to each case. And, in each such case, it will be faced with the catch-22 of either losing customers or employees or facing civil penalties. This evaluation and decision will have to be made four times per year and will be particularly onerous in the case of injuries and illnesses that occur in the third month of each quarter (Ex. 1360).

In response, OSHA disagrees with commenters who suggested that this rulemaking will violate an employer's right to due process under the Fifth Amendment. The due process clause of the Fifth Amendment provides that no person shall be "deprived of life, liberty, or property, without due process of law." The case cited above by the commenter, *Wisconsin* v. *Constantineau,* involved the posting of notices in liquor stores forbidding the sale of liquor to designated individuals for one year. A state statute provided for the posting, without notice or hearing, of the names of individuals who had exhibited specified traits, such as becoming "dangerous to the peace of the community," after consuming excessive amounts of alcohol. The Supreme Court held that because the posting of such information would result in harm to an individual's reputation, procedural due process requires notice and an opportunity to be heard. 400 U.S. 433 at 436–437.

In this circumstance, however, OSHA disagrees that the mere posting of injury and illness recordkeeping data on a publicly available Web site will adversely impact an employer's reputation. As the Note to § 1904.0 of OSHA's recordkeeping regulation makes clear, the recording or reporting of a work-related injury, illness, or fatality does not mean that an employer or employee was at fault, that an OSHA rule has been violated, or that the employee is eligible for workers' compensation or other benefits. OSHA currently publishes establishment-specific information on its Web site about reported work-related fatalities and hospitalizations. [*http://www.osha.gov/dep/fatcat/dep_fatcat.html*]; establishment-specific injury and illness rates calculated from the ODI [*http://www.osha.gov/pls/odi/establishment_search.html*]; and OSHA routinely publishes information about citations issued to employers for violations of OSHA standards and regulations. [*http://www.osha.gov/oshstats/index.html*]. Also, other agencies post establishment-specific health and safety data. For example, the Mine Safety and Health Administration (MSHA) publishes coded information about each accident, injury or illness reported to MSHA. The Federal Railroad Administration (FRA) posts headquarters-level Accident Investigation Reports filed by railroad carriers. OSHA also notes that employers have been given notice and an opportunity to comment through this rulemaking process.

With respect to the issue of whether employers have adequate time to record and report injuries and illnesses, § 1904.29(b)(3) of OSHA's recordkeeping regulation provides that employers must enter each recordable injury or illness on the OSHA 300 Log and 301 Incident Report within seven (7) calendar days of receiving information that a recordable injury or illness has occurred. In the vast majority of cases, employers know immediately or within a short time that a recordable case has occurred. In a few cases, however, it may be several days before the employer is informed that an employee's injury or illness meets one or more of the recording criteria. This regulation also allows employers to revise an entry simply by lining it out or amending it if further information justifying the revision becomes available. Accordingly, OSHA believes that the existing seven-calendar-day requirement provides employers with sufficient time to receive information and record a case. OSHA has resources, including information on its Web site at *www.osha.gov/recordkeeping* designed to assist employers in the accurate recording of injuries and illnesses.

Additionally, as explained elsewhere in this document, unlike the proposed rule, the final rule does not require employers to submit their injury and illness data to OSHA on a quarterly basis. The final rule's requirement for the electronic submission of recordkeeping data on an annual basis should reduce the burden on all employers when they make decisions on whether to record certain cases.

Administrative Issues

Public Meeting

A few commenters disagreed with OSHA's decision to hold an informal public meeting for this rulemaking. (Exs. 1332, 1396). Instead, these commenters recommended that, considering both the burden on employers and the far-reaching implications of publishing confidential information, OSHA should have held a formal public hearing pursuant to the Administrative Procedure Act (APA).

OSHA disagrees with these comments. The recordkeeping requirements promulgated under the OSH Act are regulations, not standards. Therefore, this rulemaking is governed by the notice and comment requirements in the APA (5 U.S.C. 553) rather than Section 6 of the OSH Act (29 U.S.C. 655) and 29 CFR part 1911. Section 6(b)(3) of the OSH Act (29 U.S.C. 655(b)(3)) and 29 CFR 1911.11, both of which state the requirement for OSHA to hold a public hearing on proposed rules, only apply to promulgating, modifying or revoking occupational safety and health "standards."

Section 553 of the APA, which governs this rulemaking, does not require a public hearing; instead, it states that the agency must "give interested persons an opportunity to participate in the rulemaking through submission of written data, views, or arguments with or without opportunity for oral presentation" (5 U.S.C. 553(c)). As discussed elsewhere in this document, OSHA held a public meeting for this rulemaking on January 9 and 10, 2014. OSHA believes that interested parties had a full and fair opportunity to participate in the rulemaking and comment on the proposed rule. OSHA also believes that the written comments submitted during this rulemaking, as well as the information obtained during the public meeting, greatly assisted the Agency in developing the final rule.

Advisory Committee on Construction Safety and Health (ACCSH)

The National Association of Home Builders commented that OSHA must seek input from the Advisory Committee on Construction Safety and Health (ACCSH) during this rulemaking: "NAHB strongly urges OSHA to seek input from ACCSH to better understand the impacts and consequences of its proposal" (Ex. 1408).

In response, and as pointed out by NAHB in their comments, ACCSH is a continuing advisory body established under Section 3704, paragraph (d), of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701 *et seq.*, commonly known as the Construction Safety Act), to advise the Secretary of Labor and Assistant Secretary for Occupational Safety and Health in the formulation of construction safety and health standards, and policy matters affecting federally financed or assisted construction. In addition, OSHA's regulation at 29 CFR 1912.3 provides that OSHA must consult with ACCSH regarding the setting of new construction standards under the OSH Act.

OSHA notes that both the Construction Safety Act and 29 CFR 1912.3 only require OSHA to consult with ACCSH regarding the setting of new construction "standards." As discussed above, the requirements in 29 CFR part 1904 are regulations, not standards. In addition, and as discussed elsewhere in this preamble, OSHA did consult and received advice from NACOSH prior to issuing the proposed rule. NACOSH has indicated its support for OSHA's efforts in consultation with NIOSH to modernize the system for collection of injury and illness data to assure that the data are timely, complete, and accurate, as well as accessible and useful to employees, employers, responsible government agencies and members of the public.

Open Government Initiative

In the preamble to the proposed rule, OSHA stated that OSHA plans to post the injury and illness data online, as encouraged by President Obama's Open Government Initiative. *See,* 78 FR 67258. The Initiative includes executive orders, action plans, memoranda, etc., which espouses enhanced principles of open government, transparency and greater access to information.

Two commenters stated that the Open Government Initiative does not support publication of private establishment records (Exs. 1328, 1411). The National Retail Federation (NRF) commented, "OSHA has inappropriately relied on President Obama's 'Open Government' initiative to support public disclosure of injury and illness records. The Administration's intention and purpose in issuing the Open Government initiative is to foster transparency in *government* actions. The Obama 'Open Government' initiative relates in no way to industry data collected by an agency. Accordingly, the NRF is disappointed that OSHA is attempting to rely on this initiative as justification for its proposal to make private employer information generally available to the public" (Ex. 1328). The Coalition for Workplace Safety (CWS) provided a similar comment (Ex. 1411).

In response, OSHA notes that in the Memorandum on Transparency and Open Government, issued on January 21, 2009, President Obama instructed the Director of OMB to issue an Open Government Directive. On December 8, 2009, OMB issued a Memorandum for the Heads of Executive Departments and Agencies, Open Government Directive, which requires federal agencies to take steps to "expand access to information by making it available online in open formats." The Directive also states that the "presumption shall be in favor of openness (to the extent permitted by law and subject to valid privacy, confidentiality, security, or other restrictions)." In addition, the Directive states that "agencies should proactively use modern technology to disseminate useful information, rather than waiting for specific requests under FOIA."

As noted elsewhere in this document, publication of recordkeeping data, subject to applicable privacy and confidentiality laws, will help disseminate information about occupational injuries and illnesses. Access to the data will help employers, employees, employee representatives, and researchers better identify and abate workplace hazards. Accordingly, OSHA believes that publication of injury and illness data on OSHA's Web site is consistent with President Obama's Open Government Initiative.

Privacy and Safeguarding Information

Freedom of Information Act

OSHA received several comments regarding the Freedom of Information Act (FOIA) 5 U.S.C. 552. (Exs. 1207, 1214, 1279, 1382, 1396). Some of these commenters claimed that the proposed rule was "arbitrary" and "capricious" under the Administrative Procedures Act (APA), 5 U.S.C. 706(2)(A), because OSHA has taken a different position during FOIA litigation. The U.S. Chamber of Commerce commented, "On numerous occasions, OSHA has asserted that the very information that it now seeks to publish on the internet should not be made public because it includes confidential and proprietary business information. *See, e.g., New York Times Co.* v. *U.S. Dep't of Labor,* 340 F. Supp. 2d 394 (S.D.N.Y. 2004); *OSHA Data/CIH, Inc.* v. *U.S. Dep't of Labor,* 220 F.3d 153 (3d Cir. 2000). Indeed, as recently as 2004, Miriam McD. Miller, OSHA's Co-Counsel for Administrative Law, stated in a sworn declaration that the information contained in what now constitutes OSHA's Forms 300, 300A, and 301 "is potentially confidential commercial information because it corresponds with business productivity."Decl. of Miriam McD. Miller ¶ 5, *New York Times Co.* v. *U.S. Dep't of Labor,* 340 F. Supp. 2d 394 (S.D.N.Y. 2004) (No. 03 Civ. 8334), ECF No. 16 (attached as Exhibit A)."

The Chamber went on to comment, "OSHA and the Chamber's position are, or at least were, the same: Total hours worked at individual establishments is confidential and proprietary information. *See New York Times Co.,* 340 F. Supp. 2d at 402. Indeed, in the *New York Times Co.* case, OSHA asserted that this number was not only confidential information, but had the capacity to "cause substantial competitive injury." *Id.* (citing Dep't of Labor Mem. of Law, Ex. B at 17). This is because, as OSHA itself argued, the total hours worked by a company's employees "corresponds with business productivity," Dep't of Labor Mem. of Law, Ex. B at 4, and could be used "to calculate a business['s] costs and profit margins," *id.* at 17 (citing *Westinghouse Elec. Corp.* v. *Schlesinger,* 392 F. Supp. 1264, 1249 (E.D. Va. 1976), *aff'd,* 542 F.2d 1190 (4th Cir. 1976)). The confidentiality problems relating to hours worked are only exacerbated in this Proposed Rule by OSHA's insistence on collecting and publishing this information on an establishment-by-establishment basis, *including the number of employees at each establishment.* Armed with total hours worked plus an establishment's employee count, a business' overall capacity and productivity can easily be determined" (Ex. 1396).

NAM commented, "Under the Freedom of Information Act (FOIA), certain documents are exempt from public disclosure. 5 U.S.C. 552. Exemption 4 protects 'a trade secret or privileged or confidential commercial or financial information obtained from a person.' 5 U.S.C. 552(b)(4). The NAM and its members believe employee hours worked on the OSHA Form 300A is confidential business information, because that information gives insight into the state of a business at any given time and creates a competitive harm. As such, this information is entitled to protection from disclosure to the public under FOIA, which would be consistent with how OSHA has historically treated employee hours worked" (Ex. 1279). The American Petroleum Institute (API) made a comment similar to NAM (Ex. 1214).

In response, OSHA notes that, as discussed in the preamble to the proposed rule, the information required to be submitted by employers under this final rule is not of a kind that would include confidential commercial information. The Secretary carefully considered the issues addressed in the *New York Times* case, and concluded that the information on the OSHA recordkeeping forms, including the number of employees and hours worked at an establishment, is not confidential commercial information. *See,* 78 FR 67263. The decision in *New York Times,* along with the decision in *OSHA Data,* was based on the requirements in OSHA's previous recordkeeping regulation. Prior to 2001, employers were not required to record the total number of hours worked by all employees on the OSHA forms.

Many employers already routinely disclose information about the number of employees at an establishment. Since 2001, OSHA's recordkeeping regulation has required employers to record information about the average annual number of employees and total number of hours worked by all employees on the OSHA Form 300A. Section 1904.35 also requires employers to disclose to employees, former employees, and employee representatives non-redacted copies of the OSHA Form 300A. In addition, § 1904.32(a)(4) requires employers to publicly disclose information about the number of employees and total number of hours worked through the annual posting of the 300A in the workplace for three months from February 1 to April 30.

In the *New York Times* decision, the court concluded that basic injury and illness recordkeeping data regarding the average number of employees and total number of hours worked does not involve confidential commercial information. *See,* 350 F. Supp. 2d 394 at 403. The court held that competitive harm would not result from OSHA's release of lost workday injury and illness rates of individual establishments, from which the number of employee hours worked could theoretically be derived. *Id.* at 402–403. Additionally, the court explained that most employers do not view injury and illness data as confidential. *Id.* at 403.

As noted by commenters, during the *New York Times* litigation, the Secretary argued that the injury and illness rates requested in the FOIA suit could constitute commercial information under Exemption 4 of FOIA, 5 U.S.C. 552(b)(4). However, in the years since this decision, the Secretary has reconsidered his position. Since 2004, in response to FOIA requests, it has been OSHA's policy to release information from the Form 300A on the annual average number of employees and the total hours worked by all employees during the past year at an establishment. Thus, there was a statement in the preamble to the proposed rule explaining that the Secretary no longer believes the injury and illness information entered on the OSHA recordkeeping forms constitutes confidential commercial information. Accordingly, since the *New York Times* decision in 2004, OSHA has had a consistent policy concerning the release of information on the OSHA Form 300A.

Sarah Wilensky commented that OSHA is required under FOIA to disclose much of the data it accesses from an inspection or visit to a covered establishment, and that this obligation would not change if OSHA receives information as part of this rulemaking. (Ex. 1382). This commenter also suggested that, similar to other information in OSHA's possession, employers' commercially valuable information submitted as part of this rulemaking should be subject to exemption for trade secrets under FOIA (Ex. 1382). Another commenter, MIT Laboratories, commented that FOIA is not of much use as a standard to protect privacy in this rule (Ex. 1207).

OSHA agrees with the commenters who suggested that recordkeeping information collected as part of this final rule should be posted on the Web site in accordance with FOIA. As discussed in the preamble to the proposed rule, the publication of specific data elements will in part be restricted by the provisions of FOIA. [78 FR 67259]. Currently, when OSHA receives a FOIA request for employer recordkeeping forms, the Agency releases all data fields on the OSHA 300A annual summary, including the annual average number of employees and total hours worked by employees during the year. With respect to the OSHA 300 Log, because OSHA currently obtains part 1904 records during onsite inspections, the Agency applies Exemption 7(c) of FOIA to withhold from disclosure information in Column B (the employee's name). (Note that OSHA will not collect or publish Column B under this final rule.) FOIA Exemption 7(c) provides protection for personal information in law enforcement records. [5 U.S.C. 552(b)(7)(c)]. OSHA currently uses Exemption 7(c) to withhold personal information included in Column B as well as other columns of the 300 Log. For example, OSHA would not disclose the information in Column C (Job Title), if such information could be used to identify the injured or ill employee.

Similarly, OSHA uses FOIA exemptions to withhold from disclosure Fields 1 through 9 on the OSHA 301 Incident Report. Fields 1 through 9 (the left side of the 301) includes personal information about the injured or ill employee as well as the physician or other health care professional. (Note that under this final rule, OSHA will not collect or publish Field 1 (employee name), Field 2 (employee address), Field 6 (name of treating physician or health care provider), or Field 7 (name and address of non-workplace treating facility). All fields on the right side of the 301 (Fields 10 through 18) are generally released by OSHA in response to a FOIA request.

OSHA generally uses FOIA Exemption 7(c) to withhold from disclosure any personally identifiable information included anywhere on the three OSHA recordkeeping forms. For example, although information in Field 15 of the 301 incident report (Tell us how the injury occurred) is generally released in response to a FOIA request, if that data field includes any personally-identifiable information, such as a name or Social Security number, OSHA will apply Exemption 6 or 7(c) and not release that information. FOIA Exemption 6 protects information about individuals in "personnel and medical and similar files" when the disclosure of such information "would constitute a clearly unwarranted invasion of personal privacy." [5 U.S.C. 552(b)(6)].

Additionally, OSHA currently uses FOIA Exemption 4 to withhold from disclosure information on the three recordkeeping forms regarding trade secrets or privileged or confidential commercial or financial information. [5 U.S.C. 552(b)(4)]. However, it is OSHA's experience that the inclusion of trade secret information on recordkeeping forms is extremely rare. OSHA's recordkeeping regulation does not require employers to record information about, or provide detailed descriptions of, specific brands or processes that could be considered confidential commercial information. In any event, employers will have an opportunity to inform OSHA that submitted data may contain PII or confidential commercial information.

Again, OSHA wishes to emphasize that it will post injury and illness recordkeeping information collected by this final rule consistent with FOIA.

Privacy Act

Several commenters raised concerns about a possible conflict between the proposed rule and the Privacy Act of 1974, 5 U.S.C. 552a. (Exs. 1113, 1342, 1359, 1370, 1393). The American Farm Bureau Federation (AFBF) commented, "OSHA must consider the privacy interests of farmers' names and home contact information and is obligated under federal law to do a review under the Privacy Act" (Ex. 1113). The Society of the Plastics Industry, Inc. (SPI) commented, "[G]iven the nature of the information that may be filed in the Section 1904 forms, OSHA's obligation to redact any personally identifiable medical information from those forms, and the fact that it will be infeasible to OSHA to meet that obligation, OSHA is precluded by the Federal Privacy Act from issuing the rule" (Ex. 1342). Ashok Chandran made a similar comment (Ex. 1393).

In response, OSHA notes that the Privacy Act regulates the collection, maintenance, use, and dissemination of personal identifiable information by federal agencies. Section 552a(e)(4) of the Privacy Act requires that all federal agencies publish in the **Federal Register** a notice of the existence and character of their systems of records. The Privacy Act permits the disclosure of information about individuals without their consent pursuant to a published routine use where the information will be used for a purpose that is comparable to the purpose for which the information was originally collected.

The Privacy Act only applies to records that are located in a "system of records." As defined in the Privacy Act, a system of records is "a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual." *See,* 5 U.S.C. 552a(a)(5). Because OSHA injury and illness records are retrieved neither by the name of an individual, nor by some other personal identifier, the Privacy Act does not apply to OSHA injury and illness recordkeeping records. As a result, the Privacy Act does not prevent OSHA from posting recordkeeping data on a publicly-accessible Web site. However, OSHA again wishes to emphasize that, consistent with FOIA, the Agency does not intend to post personally identifiable information on the Web site.

Trade Secrets Act

The Coalition for Workplace Safety (CWS) commented that publication of information contained in the 300, 300A, and 301 forms would be a violation of 18 U.S.C. 1905—*Disclosure of confidential information generally,* which makes it a criminal act for government officials to disclose information concerning or relating to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, loses, or expenditures of any person, firm, partnership, corporation, or association (Ex. 1411).

OSHA notes that the Trade Secrets Act, 18 U.S.C. 1905, states: "Whoever, being an officer or employee of the United States, . . . publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties . . . or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential status, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association; . . . shall be fined under this title, or imprisoned not more than one year, or both; and shall be removed from office or employment."

As discussed elsewhere in this document, the information required to be submitted under the final rule is not of a kind that would include confidential commercial information. The information is limited to the number and nature of recordable injuries or illnesses experienced by employees at particular establishments, and the data necessary to calculate injury/illness rates, *i.e.,* the number of employees and the hours worked at an establishment. Details about a company's products or production processes are generally not included on the OSHA recordkeeping forms, nor do the forms request financial information. The basic employee safety and health data required to be recorded do not involve trade secrets, and public availability of such information would not enable a competitor to obtain a competitive advantage. Accordingly, the posting of injury and illness recordkeeping data online by OSHA is not a release of confidential commercial information, and therefore is not a violation of the Trade Secrets Act. In some limited circumstances, the information recorded in compliance with part 1904 may contain commercial or financial information. OSHA considers such information to be potentially confidential, and, as appropriate, follows the procedures set forth in 29 CFR 70.26, which require OSHA to contact the employer which submitted the information prior to any potential release under FOIA Exemption 4, 5 U.S.C. 552(b)(4). Additionally, Section 15 of the OSH Act protects the confidentiality of trade secrets. 29 U.S.C. 664. Under this final rule, it will be OSHA policy not to post confidential commercial or financial information on the publicly available Web site. The case description information solicited in questions 14 through 17 on OSHA's Form 301 is broad in nature and does not call for detailed descriptions that include personal or commercially confidential information. The examples provided on the form for fields 14 and 15 include "spraying chlorine from hand sprayer" and "worker was sprayed with chlorine when gasket broke during replacement". OSHA will add additional guidance to these instructions to inform employers not to include personally identifiable information (PII) or confidential business information (CBI) within these fields.

Confidential Commercial Information

Multiple commenters stated that the proposed rule would require employers to submit proprietary and confidential business data to OSHA (Exs. 0057, 0160, 0171, 0179, 0205, 0218, 0224, 0240, 0251, 0252, 0257, 0258, 1084, 1090, 1091, 1092, 1093, 1111, 1112, 1113, 1116, 1123, 1192, 1193, 1195, 1196, 1197, 1198, 1199, 1205, 1209, 1214, 1216, 1217, 1218, 1219, 1225, 1272, 1275, 1276, 1279, 1318, 1323, 1326, 1328, 1332, 1333, 1334, 1336, 1338, 1343, 1349, 1356, 1359, 1366, 1367, 1370, 1372, 1386, 1392, 1394, 1396, 1397, 1399, 1408, 1411, 1415, 1426, 1427, 1430). In addition to the comments addressed above regarding the average number of employees and total hours worked by employees, commenters expressed concern about the confidentiality of other data on the

OSHA recordkeeping forms. IPC–Association Connecting Electronics Industries made a specific comment that "the requirement in column F [OSHA 300 Log] to disclose the "object/substance that directly injured or made person ill" creates a mechanism that could lead to disclosure of intellectual property to competitors, both foreign and domestic, especially in research and development facilities" (Ex. 1334). Darren Snikrep commented, "The plan to provide public access to the data means a loss of privacy for employers and may adversely affect an employer's ability to obtain work" (Ex. 0057). Similarly, the Louisiana Farm Bureau commented, "The proposed rule states that the company's executive's signature, title, telephone number, the establishment's name and street address, industry description, SIC or NAICS code and employment information including annual average number of employees, total hours worked by all employees will all be non-protected information that is readily available to the public via the OSHA data portal and downloadable to anyone. This invites targeting of employers that may have no basis on actual workplace safety. We strongly feel that an employer's information identified with OSHA reporting should be kept private, the same as the privacy afforded workers under the proposed OSHA rule." (Ex. 1386).

On the other hand, the Associated General Contractors of Michigan commented that recordkeeping data are not proprietary and confidential business information: "Companies with over 20 employees during the reporting year must electronically report annually using the OSHA 300A Summary Form. This type of reporting would not be a burden on employers and would avoid 'privacy issues', but would provide enough information for a more effective enforcement effort" (Ex. 0250). J. Wilson made a similar comment (Ex. 0238).

In response, OSHA again wishes to emphasize that it is not the Agency's intention to post proprietary or confidential commercial information on the publicly-accessible Web site. The purpose for the publication of recordkeeping data under this final rule is to disseminate information about occupational injuries and illnesses. OSHA agrees with commenters who stated that recordkeeping data generally do not include proprietary or commercial business information. Specifically, information on the 300A annual summary, such as the establishment's name, business address, and NAICS code, are already publicly available.

As discussed above, OSHA is prohibited from releasing proprietary or confidential commercial information under FOIA Exemption 4. The term "confidential commercial information" means "records provided to the government by a submitter that arguably contain material exempt from release under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4), because its disclosure could reasonably be expected to cause substantial competitive harm." *See,* Executive Order 12600, *Predisclosure notification procedures for confidential commercial information.* [June 23, 1987]. Additionally, because recordkeeping data will be posted on a publicly-accessible Web site, when recording injuries and illnesses at their establishment, OSHA encourages employers not to enter confidential commercial information on the recordkeeping forms.

Submission of Personally Identifiable Information and Employee Privacy

OSHA received several comments in support of electronic submission of part 1904 data with personally identifiable information (PII) (Exs. 0208, 1106, 1211, 1350, 1354, 1381, 1382, 1387, 1395). Many commenters commented that federal and state agencies require electronic submission of health and safety data without the misuse of personal identifiers (Exs. 0208, 1106, 1211, 1350, 1354, 1381, 1382, 1387, 1395). For example, the Department of Workplace Standards, Kentucky Labor Cabinet commented that they do "not foresee misuse of the information; other agencies require electronic submission of similar data and have accomplished the requirement without misuse of personal identifiers" (Ex. 0208). Sarah Wilensky, the Service Employees International Union (SEIU) and the California Department of Industrial Relations (DIR), Office of the Director provided similar comments (Exs. 1382, 1387, 1395).

The American Public Health Association (APHA) commented that OSHA's sister agency, the Mine Safety and Health Administration (MSHA), "has collected and posted on its Web site far more detailed and comprehensive information on work-place injuries than is being proposed by OSHA" (Ex. 1354). The AFL–CIO and the International Brotherhood of Teamsters provided similar comments (Exs. 1350, 1381).

However, there were also many comments opposing employer submission of certain data from the OSHA Form 300 and 301. Thoron Bennett commented that OSHA should not "collect [employee] names from OSHA 300 or 301 logs" (Ex. 0035). The International Association of Drilling Contractors (IADC) provided a similar comment (Ex. 1199).

The Phylmar Regulatory Roundtable commented that employers should "not be required to submit information including names, dates of birth, addresses, Social Security Number, etc. . . . Requiring electronic submissions containing PII to OSHA unnecessarily creates an opportunity for private information to accidentally become public" (Ex. 1110). The U.S. Poultry & Egg Association, Huntington Ingalls Industries—Newport News Shipbuilding, and Melinda Ward provided similar comments (Exs. 1109, 1196, 1223). Huntington Ingalls Industries—Newport News Shipbuilding also commented that employees could "have the ability to opt out of having their personally identifiable information provided to OSHA" (Ex. 1196).

MIT Laboratories commented that "OSHA should consider developing a toolkit or educational materials to help employers identify information that poses a re-identification risk in their workplace records, especially if OSHA expect [sic] that its recordkeeping forms will continue to elicit textual descriptions of injuries and illnesses in the future. Such materials could help mitigate the risk that employers will include identifying information in the form" (Ex. 1207).

OSHA partially agrees with commenters who stated that employers should submit their data to OSHA with PII about employees included on the 300 and 301 forms. In many cases, PII entered on the OSHA recordkeeping forms includes important information that the Agency uses for activities designed to increase workplace safety and health and prevent occupational injuries and illnesses, including outreach, compliance assistance, enforcement, and research. As discussed elsewhere in this preamble, other government agencies are able to handle vary large amounts of PII, and OSHA will follow accepted procedures and protocols to prevent the release of such information.

However, for some data fields, OSHA does not consider the data from these fields necessary to meet the various stated goals of the data collection. These fields primarily exist to help people doing incident investigations at the establishment. Collecting data from these fields would not add to OSHA's or any other user's ability to identify establishments with specific hazards or elevated injury and illness rates.

Therefore, OSHA has decided in this final rule to exclude from the submittal requirements several fields on the OSHA Forms 300 and 301 to minimize any potential release or unauthorized access to these data. The data elements are:

- Log of Work-Related Injuries and Illnesses (OSHA Form 300): Employee name (column B).
- Injury and Illness Incident Report (OSHA Form 301): Employee name (field 1), employee address (field 2), name of physician or other health care professional (field 6), facility name and address if treatment was given away from the worksite (field 7).

Additionally, several commenters expressed concern about the potential public release of personal information about employees from the OSHA recordkeeping forms. (Exs. 0171, 0189, 0209, 0210, 0215, 0250, 0253, 1091, 1113, 1199, 1201, 1206, 1207, 1276, 1329, 1359, 1370, 1386, 1408, 1410). These commenters stated that the OSHA recordkeeping forms contain private and highly confidential employee information, including medical information. Some commenters also raised concerns about previous OSHA rulemakings. For example, the National Association of Home Builders (NAHB) commented, "OSHA has made specific findings related to privacy interest of employees and the utility of making certain recordkeeping forms public. Having done so, OSHA must explain why it is deviating from its past practice and positions . . . OSHA is required to comply with the Administrative Procedure Act and provide a reasoned explanation for this change of policy, starting by recognizing past policy and a justification for the change. OSHA has not done so here and failure to do so here makes this change arbitrary and capricious" (Ex. 1408).

A few commenters suggested that OSHA should balance the public interest of disclosure with the employee's right to privacy (Exs. 1279, 1408, 1411). NAM commented:

> In the **Federal Register** publishing the final rule to the Part 1904 revisions, OSHA acknowledged the existence of a U.S. Constitutional right of privacy in personal information. In doing so, OSHA cited to various U.S. Supreme Court and federal circuit court decisions that have suggested that such a right exists. 66 FR at 6054. *See, e.g., Whalen* v. *Roe,* 429 U.S. 588 (1977), *Nixon* v. *Adm'r of General Services,* 433 U.S. 425 (1977), *Paul* v. *Verniero,* 170 F.3d 396, 402 (3d Cir. 1999), *Norman-Bloodsay* v. *Lawrence Berkeley Lab.,* 135 F.3d 1260, 1269 (9th Cir. 1998).
>
> Further, OSHA recognized that "information about the state of a person's health, including his or her medical treatment, prescription drug use, HIV status and related matters is entitled to privacy protection" and that "there are few matters that are quite so personal as the status of one's health, and few matters the dissemination of which one would prefer to maintain greater control over." 66 FR at 6054. OSHA went on to acknowledge that "[t]he right to privacy is not limited to medical records. Other types of records containing medical information are also covered." *Id.* at 6055. (citations omitted).
>
> After recognizing that a right of privacy exists and is entitled to protection, OSHA applied a balancing test—weighing the individual's interest in confidentiality against the public interest in disclosure to employees and representatives. *Id.* After lengthy analysis, OSHA concluded that allowing employees access to information contained on the Form 301 served a legitimate public interest—that is helping employees to protect themselves from future injuries or illness.
>
> The proposed regulation discussed in these comments, ignores this right of privacy and abandons any type of balancing test. OSHA does not allege any reasons that making such information available to the public outweighs the privacy interests of the individual employees. Merely redacting an employee's name does not provide sufficient protection from the release, even inadvertently, of other personally identifiable information or medical information that employees maintain a privacy interest in (Ex. 1279).

Other commenters raised a specific concern about the release of personal information in the agricultural industry, where many families live on farms where they work (Exs. 1113, 1359, 1370, 1386). Commenters stated that, under the proposed rule, a publicly-searchable database will include information about farmers' names, their home address, as well as other home contact information. These commenters also emphasized that the proposed rule would lead to serious security and privacy concerns that OSHA has not addressed.

Additionally, the American Health Care Association/National Center for Assisted Living (AHCA/NCAL) asked whether the proposed rule would compromise the privacy of patients in the health care industry. This commenter stated that they assist and care for people and that this involves day-to-day interactions with patients, residents, and their families—"who expect that their privacy will be protected and that personal information about them or their conditions will not be broadcast on OSHA's Web page" (Ex. 1194).

In response, OSHA disagrees with commenters who suggested that the Agency is deviating from its past practice regarding recordkeeping information and the privacy interest of employees. In the preamble to the 2001 final rule revising the part 1904 recordkeeping regulation, OSHA explained that it has historically recognized that the OSHA 300 Log and 301 Incident Report may contain information that an individual would wish to remain confidential. [66 FR 6055]. OSHA also acknowledged that although the entries on the 300 Log are typically brief, they may contain medical information, including diagnosis of specific illnesses. *Id.* However, OSHA concluded that disclosure of the Log and Incident Report to employees, former employees, and their representatives benefits these employees generally by increasing their awareness and understanding of the safety and health hazards in the workplace. Thus, current § 1904.35, *Access to records,* permits employees, former employees, and employee representatives access to information on the OSHA recordkeeping forms. As the 2001 preamble makes clear, OSHA authorized this right of access after balancing the privacy rights of individuals with the public interest for disclosure. In addition, the 2001 preamble states that OSHA does not have the statutory authority to prevent the disclosure of private information once the records are in the possession of employees, former employees and their representatives. [66 FR 5056].

OSHA acknowledges commenters' concerns about the potential posting of private employee information on a publicly-accessible Web site. However, the posting or disclosure of private or confidential information has never been the intent of this rulemaking. OSHA believes it has effective safeguards in place to prevent the disclosure of personal or confidential information contained in the recordkeeping forms and submitted to OSHA. Specifically, as discussed above, OSHA will neither collect nor publish the following information:

- Log of Work-Related Injuries and Illnesses (OSHA Form 300): Employee name (column B).
- Injury and Illness Incident Report (OSHA Form 301): Employee name (field 1), employee address (field 2), name of physician or other health care professional (field 6), facility name and address if treatment was given away from the worksite (field 7).

Also, OSHA's recordkeeping regulation at § 1904.29(b)(10) prohibits the release of employees' names and personal identifiers related to "privacy concern cases." OSHA will also withhold from publication all of the information on the left-hand side of the OSHA 301 Incident Report that is submitted to OSHA (employee date of birth (Field 3), employee date hired

(Field 4), and employee gender (Field 5)). All of the information on the right hand side (Fields 10 through 18) will generally be posted on the Web site (after it is scrubbed for PII). Finally, because the OSHA 300A Annual Summary does not contain any personally-identifiable information, all of the fields on the OSHA 300A Annual Summary will be posted.

OSHA also acknowledges that certain data fields on the OSHA 300 and 301 may contain personally-identifiable information. It has been OSHA's experience that information entered in Column F of the 300 Log may contain personally-identifiable information. For example, when describing an injury or illness, employers sometimes include names of employees. As a result, OSHA plans to review the information submitted by employers for personally-identifiable information. As part of this review, the Agency will use software that will search for, and de-identify, personally identifiable information before the submitted data are posted.

In response to commenters who expressed concern about the posting of personal information from family farms, OSHA notes that it is extremely unlikely that personal information from family farms will be collected or posted under this final rule. Section 1904.41(a)(1) of the final rule requires only establishments with 250 or more employees to submit information from the three OSHA recordkeeping forms. In addition, § 1904.41(a)(2) of the final rule makes clear that only establishments in designated industries with 20 more employees, but fewer than 250 employees, must submit information from the OSHA 300A annual summary. As a result, in most cases, family farms will not be required to submit injury and illness recordkeeping data to OSHA under this final rule.

As discussed elsewhere in this preamble, under § 1904.41(a)(3) of the final rule, some employers with 19 or fewer employees (including small farms) may be required to submit their injury and illness recordkeeping data to OSHA. Farm address and contact information is already commercially available, and the information can be purchased from such companies as D&B and Experian. Also, address and contact information for small farms that have been inspected by OSHA is already on the Agency's public Web site.

A number of commenters suggested that, even though OSHA intended to delete employee names and other identifying information, enough information would remain in the published data for the public to identify the injured or ill employee (Exs. 0189, 0211, 0218, 0224, 0240, 0241, 0242, 0252, 0253, 0258, 1084, 1090, 1092, 1093, 1109, 1113, 1122, 1123, 1190, 1192, 1194, 1197, 1198, 1199, 1200, 1205, 1206, 1207, 1209, 1214, 1217, 1218, 1219, 1223, 1272, 1273, 1275, 1276, 1279, 1318, 1321, 1322, 1323, 1326, 1327, 1331, 1333, 1334, 1336, 1338, 1342, 1343, 1348, 1349, 1353, 1355, 1356, 1359, 1360, 1370, 1372, 1376, 1378, 1386, 1389, 1392, 1394, 1396, 1397, 1399, 1402, 1408, 1410, 1411, 1412, 1415, 1417, 1427, 1430). Some of these commenters were specifically concerned about the anonymity of injured or ill employees working at small establishments located in small communities. For example, commenters noted that information such as type of injury or illness, date and location of injury or illness, type of body part injured, treatment, and job title, could be used to identify the employee.

In response, OSHA notes that the final rule requires only establishments with 250 or more employees to submit information from all three OSHA recordkeeping forms. The Agency believes it is less likely that employees in such large establishments will be identified based on the posted recordkeeping data. By contrast, establishments with 20 to 249 employees that are required to submit recordkeeping data under this final rule are only required to submit their OSHA 300A annual summary. As discussed above, the OSHA Form 300A includes only aggregate injury and illness data from a specific establishment.

Safeguarding Collected Information

OSHA received multiple comments on the issue of safeguarding the information collected under this final rule. Several commenters commented that OSHA should use and specify procedures for cybersecurity measures to protect confidential information (Exs. 1210, 1333, 1334, 1364, 1409). For example, IPC—Association Connecting Electronics Industries commented that "IPC is concerned about the security of the injury and illness data reported to OSHA. IPC asks OSHA to specify the security measures that will be used to protect sensitive information" (Ex. 1334).

MIT Laboratories commented more generally about the misuse of collected data. They stated that there is a lack of "mechanisms that would provide accountability for harm arising from misuse of disclosed data . . . Accountability mechanisms should enable individuals to find out where data describing them has been distributed and used, set forth penalties for misuse, and provide harmed individuals with a right of action" (Ex. 1207). The American Road and Transportation Builders Association (ARTBA) provided a similar comment (Ex. 1409).

In response, when OSHA develops the data collection system, the Agency plans to maintain two data repositories in the system: One as OSHA's data mart (or warehouse) for prescribed data behind a secure firewall, and a separate but similarly secured repository of data that has been verified as scrubbed and available for public access. Both systems will have multi-tiered access controls, and the internal system will specifically be designed to limit access to PII to as few users as possible. In addition, OSHA will consider the possible need to encrypt sensitive data in the data mart repository as a safeguard, so that data would be scrubbed (and rendered unreadable and useless) in the case of unauthorized access. Also, as discussed above, OSHA will not collect data from certain fields that primarily exist to help people doing incident investigations at the establishment and that would not add to OSHA's or any other user's ability to identify establishments with specific hazards or elevated injury and illness rates.

Additionally, NAM commented that, in the preamble to the 2001 final rule, OSHA acknowledged the inability to protect personal information in part 1904: "In 2001, OSHA acknowledged that the agency had no means of protecting against unwarranted disclosure of private information contained in an employer's injury and illness records or that there were sufficient safeguards in place to protect against misuse of private information. But more importantly, OSHA acknowledged that "[t]he right to collect and use [private] data for public purposes is typically accompanied by a concomitant statutory or regulatory duty to avoid unwarranted disclosures." 66 FR at 6056." (Ex. 1279). Other commenters commented that there is no assurance that OSHA will be able to protect the privacy of the employee once the recordkeeping data is submitted (Exs. 0187, 1217, 1275).

In response, OSHA disagrees with commenters who suggested the Agency will not be able to protect employee information. As discussed above, two ways OSHA can protect the privacy of employee information are by not collecting certain information and by not releasing personally identifiable information on the publicly-accessible Web site. With respect to safeguarding the information submitted by employers, OSHA is strongly committed to maintaining the confidentiality of the information it collects, as well as the security of its computer system. All federal agencies are required to establish appropriate administrative and technical safeguards to ensure that the security of all media containing confidential information is protected against unauthorized disclosures and anticipated threats or hazards to their security or integrity. Regardless of the category of information, all Department of Labor agencies must comply with the Privacy and Security Statement posted on DOL's Web site. As part of its efforts to ensure and maintain the integrity of the information disseminated to the public, DOL's IT security policy and planning framework is designed to protect information from unauthorized access or revision and to ensure that the information is not compromised through corruption or falsification.

Posting of the annual summary in the workplace is not public disclosure.

The International Association of Amusement Parks (IAAP) commented that OSHA only addressed the privacy concern by stating in the preamble to the proposed rule that an employer already has the obligation to publish recordkeeping data when they post the OSHA 300A. IAAP commented, however, that "[t]his posting of the annual summary data by an employer is not comparable to posting injury and illness data on a searchable, publicly accessible database. Employers can post the annual summary data on employee bulletin boards which are typically not located in places where the public has access" (Ex. 1427). The American Fuel & Petroleum Association (AFPA) also noted that "[w]ith respect to posting annual summary data, the information stays within the place of employment. Even if an employee decides to distribute the information, the reach would probably be limited to the immediate, surrounding area" (Ex. 1336).

In response, OSHA notes that one of the objectives of this rulemaking is to produce a wider public dissemination of information about recordable occupational injuries and illnesses. The Annual Summary does not include personally-identifiable information, and the posting of the information on the Web site should not involve privacy or confidentiality concerns. With respect to the posting on the Web site of information from the 300 Log and 301 Incident Report for establishments with 250 or more employees, such posting will not include personally-identifiable information. Again, the goal of the final rule is to disseminate injury and illness data, not to disseminate personal information about employers or employees.

Privacy Concern Cases

Some commenters raised concerns about the proposed rule and the protection of personally identifiable employee information included in "privacy concern cases" (Exs. 0150, 1207, 1279, 1335, 1339). Under OSHA's existing recordkeeping regulation, § 1904.29(b)(6)) requires employers to withhold the injured or ill employee's name from the 300 Log for injuries and illnesses defined as "privacy concern cases." Section 1904.29(b)(7) defines privacy concern cases as those involving (i) an injury or illness to an intimate body part or the reproductive system; (ii) an injury or illness resulting from a sexual assault; (iii) a mental illness; (iv) a work-related HIV infection, hepatitis case, or tuberculosis case; (v) needlestick injuries and cuts from sharp objects that are contaminated with another person's blood or other potentially infectious material, or (vi) any other illness, if the employee independently and voluntarily requests that his or her name not be entered on the log. Additionally, § 1904.29(b)(10) includes provisions addressing employee privacy if the employer decides voluntarily to disclose the OSHA 300 and 301 forms to persons other than those who have a mandatory right of access under § 1904.35. The paragraph requires employers to remove or hide employees' names or other personally identifiable information before disclosing the forms to persons other than government representatives, former employees, or authorized representatives, as required by §§ 1904.40 and 1904.35, except in three cases. The employer may disclose the forms, complete with personally-identifiable information, only to: (i) An auditor or consultant hired by the employer to evaluate the safety and health program; (ii) the extent necessary for processing a claim for workers' compensation or other insurance benefits; or (iii) a public health authority or law enforcement agency for uses and disclosures for which consent, an authorization, or opportunity to agree or disagree or object is not required under 45 CFR 164.512 (Privacy Rule).

In its comments, NAM stated that OSHA failed to address how § 1904.29(b)(6)–(10) would be affected by the proposed rule. NAM commented that there may be differences between employers and OSHA as to what is considered personally identifiable information.

> Assume that an employer voluntarily provides its OSHA Forms 300 and 301 to an outside safety and health organization. In choosing to do so, the employer is required to redact the employees' names and "other personally identifying information." Depending on a variety of factors, the employer chooses to redact certain information, including job titles and dates of injuries. Yet, months later when OSHA receives this employer's injury and illness records *it* decides to only redact the employees' names. The safety and health organization could put both sets of data together—something OSHA seems to want to encourage—and the safety and health organization could conceivably identify various individuals. Using this information, the safety and health organization contacts the employee. In many instances, the employee may not want to be contacted or have their information used and disseminated any further, constituting an unwarranted and ongoing invasion of the employee's privacy (Ex. 1279).

Additionally, Portland Cement commented: "The Agency has not shown the regulated community in this proposal what a revised Form 300, if developed, would show, and explicit wording in the proposed 1904.41 would require the employee's name to be shown in the electronic submission to OSHA. Because the Agency has clearly defined "privacy concern cases" in part 1904.29(b)(6) for when employers may keep confidential the identity of the injured or ill employee, there are concerns about why OSHA did not more clearly and explicitly address naming the employee in the proposed electronic submission requirement found in proposed 1904.41, and why the Agency did not provide a revised OSHA Form 300 for review in the proposed regulation" (Ex. 1335).

In response, OSHA agrees with commenters who stated that the confidentiality of privacy concern cases is extremely important. The requirements in existing § 1904.29(b)(6) through (10) were issued by OSHA in 2001 as a result of the Agency's strong commitment to protect the identity of employees involved in privacy concern cases. As discussed above, the final rule requires employers at establishments with 250 or more employees to submit information about the employee and the employee's injury/illness recorded on the 300 and 301 forms, except employee name and address, treating physician name, and treating facility name and address. This includes the information related to privacy concern cases. Since OSHA will have the relevant information from the forms, employers are not required to submit the confidential list of privacy concern cases.

Also as discussed above, OSHA will not collect or post information from Column B (the employee's name) from the 300 Log or from Fields 1, 2, 6, or 7 from the 301 Incident Report. In addition, OSHA will not post information from Fields 3 through 5 of the 301 Incident Report. Information in items 14 through 17 will be scrubbed for PII before being released publicly. This will ensure that information about an employee's name, address, date of birth, date hired, and gender is not disclosed. OSHA also does not intend to post any other information on the Web site that could be used to identify an individual. Additionally, OSHA will conduct a special review of submitted privacy concern case information to ensure that the identity of the employee is protected.

With respect to NAM's comment regarding the definition of "personally-identifiable information," OSHA uses the definition provided in the May 22, 2007, OMB Memorandum for the Heads of Executive Departments and Agencies, "Safeguarding Against and Responding to the Breach of Personally Identifiable Information." The term "personally-identifiable information" refers to information which can be used to distinguish or trace an individual's identify, such as their name, Social Security number, biometric records, etc. alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, etc. Based on this definition, certain information included on the OSHA recordkeeping forms is personally identifiable information. For example, an employee's name, address, date of birth, date hired, and gender would be personally identifiable information and not subject to posting on the publicly-accessible Web site as establishment-specific data. (However, note that OSHA will not collect information about the employee's name or address under this final rule.)

Other information included on the OSHA forms may also be personally identifiable information. As mentioned by a commenter, depending on the circumstances at a specific establishment, the information in Column C (Job Title) from the 300 Log could be used to identify an employee who was involved in a privacy concern case. In fact, OSHA's current recordkeeping Frequently Asked Question (FAQ) 29–3 permits an employer to delete information (such as Job Title) if they believe it will identify the employee. However, OSHA also believes that because only establishments with 250 or more employers will be required to submit the OSHA 300 Log and 301 Incident Report, it is less likely that information related to Job Title can be used to identify an employee.

OSHA further notes that comments that suggested additional categories for privacy concern cases are not within the scope of this rulemaking. Any revision to existing § 1904.29(b)(6) through (10) would require separate notice and comment rulemaking.

Confidential Information Protection and Statistical Efficiency Act

Several commenters stated that the online posting of covered employers injury and illness recordkeeping data violates the Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA) (Pub. L. 107–347, December 17, 2002) (Exs. 1225, 1392, 1399). These commenters noted that CIPSEA prohibits BLS from releasing establishment-specific injury and illness data to the general public or to OSHA, and that OSHA has not adequately addressed how the release of part 1904 information under this rulemaking is consistent with the Congressional mandate expressed in the law.

Two commenters also stated that publishing data from the OSHA recordkeeping forms would circumvent Congress's intent from 2002 (Exs. 1193, 1430). These commenters noted that data on the 300 and 301 forms are already reported to BLS, and when Congress passed CIPSEA, it made the determination that such information should be confidential and prohibited BLS from releasing establishment-specific data to the general public or to OSHA.

In response, OSHA notes that CIPSEA provides strong confidentiality protections for statistical information collections that are conducted or sponsored by federal agencies. The law prevents the disclosure of data or information in identifiable form if the information is acquired by an agency under a pledge of confidentiality for exclusively statistical purposes. *See,* section 512(b)(1). BLS, whose mission is to collect, process, analyze, and disseminate statistical information, uses a pledge of confidentiality when requesting occupational injury and illness information from respondents under the BLS Survey.

The provisions of CIPSEA apply when a federal agency both pledges to protect the confidentiality of the information it acquires and uses the information only for statistical purposes. Conversely, the provisions of CIPSEA do not apply if information is collected or used by a federal agency for any non-statistical purpose. As noted elsewhere in this document, the information collected and published by OSHA in the final rule will be used for several purposes, including for the targeting of OSHA enforcement activities. Therefore, the CIPSEA confidentiality provisions are not applicable to the final rule.

Data Quality Act

Peter Strauss commented that OSHA is entitled to collect the workplace injury and illness records as prescribed by the proposed rule, but the Data Quality Act assures against the mishandling of such data (Ex. 0187). Another commenter, Society of Plastics Industry, Inc., commented: "Let us assume, solely for purposes of further analysis, and contrary to its stated purpose, that the publication of this information was designed solely to inform affected employers and employees of workplace incidents, and implicitly workplace conditions, so they could take remedial and/or preventive measures to prevent incidents from happening again. OSHA would be publishing information that has not been investigated or otherwise verified through appropriate quality controls, that would be misleading (in that it would be published without any meaningful context and in a manner designed to convey employer responsibility notwithstanding any accompanying disclaimers), and that may very well contain personal identifiers or personally identifiable information that could effectively result in the unlawful disclosure of personal medical information. This type of publication would conflict with the goals of the OSH Act, the requirements of the Data Quality Act, and the requirements of the applicable privacy laws" (Ex. 1342).

In response, OSHA notes that the Data Quality Act, or Information Quality Act, was passed by Congress in Section 115 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658). The Act directs the Office of Management and Budget (OMB) to issue government-wide guidelines that "provide policy and procedural guidance to federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by federal agencies." The Act also requires other federal agencies to publish their own implementation guidelines that include "administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency" that does not comply with the guidelines issued by OMB. The Department of Labor issued its implementing guidelines on October 1, 2002. [*http://www.dol.gov/informationquality.htm*]. The purpose of these guidelines is to establish Departmental guidelines for implementing an information quality program at DOL and to enhance the quality of information disseminated by DOL.

The DOL Guidelines state that "dissemination" includes agency initiated or sponsored distribution of information to the public." It does not include "agency citations to or discussion of information that was prepared by others and considered by the agency in the performance of its responsibilities, unless an agency disseminates it in a manner that reasonably suggests that the agency agrees with the information." OSHA notes that it will make no determination as to whether the Agency agrees with the recordkeeping information electronically submitted under the final rule. In addition, with the exception of redacting personally identifiable information, OSHA will not amend the raw recordkeeping data submitted by employers. As a result, the provisions of the Information Quality Act, as well as the DOL information quality guidelines, do not apply to the recordkeeping information posted on the public Web site.

Although the provisions of the Information Quality Act do not apply, OSHA still wishes to emphasize that, as part of its efforts to ensure accuracy, the Agency encourages affected employers, employees, and other individuals to seek and obtain, where appropriate, correction of recordkeeping data posted on the public Web site. OSHA believes that in most cases, informal contacts with the Agency will be appropriate. However, OSHA will also make available on its Web site a list of officials to whom requests for corrections should be sent and where and how such officials may be contacted. The purpose of this correction process is to address inaccuracies in the posted information, not to resolve underlying substantive policy or legal issues.

Health Insurance Portability and Accountability Act

Several commenters raised concerns about whether the proposed rule would hinder individual privacy rights under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104–191. Some of these commenters stated that the HIPAA privacy regulation at 45 CFR parts 160 and 164 (Privacy Rule), prohibits OSHA from public disclosure of personally-identifiable health information. Other commenters expressed the concern that employers would be in violation of the Privacy Rule if this rulemaking requires them to submit protected health information to OSHA (Exs. 0218, 0224, 0240, 0252, 1084, 1093, 1109, 1111, 1123, 1197, 1200, 1205, 1206, 1210, 1214, 1217, 1218, 1223, 1272, 1275, 1279, 1331, 1338, 1342, 1362, 1370, 1386, 1402, 1408).

In response, OSHA notes that on December 28, 2000, the U.S. Department of Health and Human Services (HHS) issued a final rule, *Standard for Privacy of Individually-Identifiable Health Information* (65 FR 82462). The rule was modified on August 14, 2002 (67 FR 53182), which is codified at 45 CFR parts 160 and 164. Collectively known as the "Privacy Rule," these standards protect the privacy of individually identifiable health information ("protected health information" or "PHI"), but is balanced to ensure that appropriate uses and disclosures of PHI still may be made when necessary to treat a patient, to protect the nation's public health, and for other critical purposes. A covered entity may not use or disclose protected health information unless permitted by the Privacy Rule. *See,* 45 CFR 164.502.

As required by HIPAA, the provisions of the Privacy Rule only apply to "covered entities." The term "covered entity" includes health plans, health care clearinghouses, and health care providers who conduct certain financial and administrative transactions electronically. *See,* 45 CFR 160.103. OSHA notes that the Agency does not fall within the definition of a covered entity for purposes of the Privacy Rule. Therefore, the use and disclosure requirements of the Privacy Rule do not apply to OSHA, and do not prevent the Agency from publishing injury and illness recordkeeping information under this final rule.

Additionally, OSHA agrees with commenters who suggested that the Agency consider applying the principles set forth in the Privacy Rule for the de-identification of health information. OSHA believes that health information is individually identifiable if it does, or potentially could, identify the individual. As explained by commenters, once protected health information is de-identified, there may no longer be privacy concerns under HIPAA. Again, it is OSHA's policy under the final rule not to release any individually-identifiable information. As discussed elsewhere in this document, procedures are in place to ensure that individually-identifiable information, including health information, will not be publicly posted on the OSHA Web site.

With respect to the issue of whether HIPAA prevents covered entities from disclosing PHI to employers, and/or directly to OSHA, the Agency notes that the Privacy Rule specifically includes several exemptions for disclosures of health information without individual authorization. Of particular significance, is 45 CFR 164.512—*Uses and disclosures for which authorization or opportunity to agree or object is not required.* These standards, in themselves, do not compel a covered entity to disclose PHI. Instead, they merely permit the covered entity to make the requested disclosure without obtaining authorization from affected individuals. Section 164.512(a) of the Privacy Rule permits covered entities to use and disclose PHI, without authorization, when they are required to do so by another law. HHS has made clear that this disclosure encompasses the full array of binding legal authorities, including statutes, agency orders, regulations, or other federal, state or local governmental actions having the effect of law. *See,* 65 FR 82668. As a result, the Privacy Rule does not allow a covered entity to restrict or refuse to disclose PHI required by an OSHA standard or regulation.

A covered entity may also disclose PHI without individual authorization to "public health authorities" and to "health oversight agencies." *See,* 45 CFR 164.512(b) and (d). The preamble to the Privacy Rule specifically mentions OSHA as an example of both. *See,* 65 FR 82492, 82526.

The Privacy Rule also permits a covered entity who is a member of the employer's workforce, or provides health care at the request of an employer, to disclose to employers protected health information concerning work-related injuries or illnesses or work-related medical surveillance in situations where the employer has a duty under the OSH Act, the Mine Act, or under a similar state law to keep records on or act on such information. Section 164.512(b)(1)(v)(C) specifically permits a covered entity to use or disclose protected health information if the employer needs such information in order to comply with obligations under 29 CFR parts 1904 through 1928.

Americans With Disabilities Act

The New York Farm Bureau (NYFB) commented that the Americans with Disabilities Act of 1990 (ADA), 42

U.S.C. 12101 *et seq.* prohibits the release of health and disability-related information (Ex. 1370). NYFB specifically requested that OSHA explain how compliance with the electronic reporting requirement can be accomplished while meeting the requirements of the ADA.

In response, OSHA notes that Section 12112(d)(3)(B) of the ADA permits an employer to require a job applicant to submit to a medical examination after an offer of employment has been made but before commencement of employment duties, provided that medical information obtained from the examination is kept in a confidential medical file and not disclosed except as necessary to inform supervisors, first aid and safety personnel, and government officials investigating compliance with the ADA. Section 12112(d)(4)(C) requires that the same confidentiality protection be accorded health information obtained from a voluntary medical examination that is part of an employee health program.

By its terms, the ADA requires confidentiality for information obtained from medical examinations given to prospective employees, and from medical examinations given as part of a voluntary employee health program. The OSHA injury and illness records are not derived from pre-employment or voluntary health programs. The information in the OSHA injury and illness records is similar to that found in workers' compensation forms, and may be obtained by employers by the same process used to record needed information for workers' compensation and insurance purposes. The Equal Employment Opportunity Commission (EEOC), the agency responsible for administering the ADA, recognizes a partial exception to the ADA's strict confidentiality requirements for medical information regarding an employee's occupational injury or workers' compensation claim. *See* EEOC Enforcement Guidance: Workers' Compensation and the ADA, 5 (September 3, 1996). Therefore, it is not clear that the ADA applies to the OSHA injury and illness records.

Even assuming that the OSHA injury and illness records fall within the literal scope of the ADA's confidentiality provisions, it does not follow that a conflict arises. The ADA states that "nothing in this Act shall be construed to invalidate or limit the remedies, rights, and procedures of any federal law." *See,* 29 U.S.C. 12201(b). In enacting the ADA, Congress was aware that other federal standards imposed requirements for testing an employee's health, and for disseminating information about an employee's medical condition or history, determined to be necessary to preserve the health and safety of employees and the public. *See,* H.R. Rep. No. 101–485 pt. 2, 101st Cong., 2d Sess. 74–75 (1990), reprinted in 1990 U.S.C.C.A.N. 356, 357 (noting, *e.g.* medical surveillance requirements of standards promulgated under OSH Act and federal Mine Safety and Health Act, and stating "[t]he Committee does not intend for [the ADA] to override any medical standard or requirement established by federal . . . law . . . that is job-related and consistent with business necessity"). *See also,* 29 CFR part 1630 App. p. 356. The ADA recognizes the primacy of federal safety and health regulations; therefore such regulations, including mandatory OSHA recordkeeping requirements, pose no conflict with the ADA. *Cf. Albertsons, Inc.* v. *Kirkingburg,* 527 U.S. 555, (1999) ("When Congress enacted the ADA, it recognized that federal safety and health rules would limit application of the ADA as a matter of law.").

The EEOC has also recognized both in the implementing regulations at 29 CFR part 1630, as well as in interpretive guidelines, that the ADA yields to the requirements of other federal safety and health standards and regulations. The implementing regulation codified at 29 CFR 1630.15(e) explicitly states that an employer's compliance with another federal law or regulation may be a defense to a charge of violating the ADA.

Additionally, the EEOC Technical Assistance Manual on the ADA states that the "ADA does not override health and safety requirements established under other Federal laws . . . For example, . . . Employers also must conform to health and safety requirements of the U.S. Occupational Safety and Health Administration (OSHA)." For these reasons, OSHA does not believe that the mandatory submission and publication requirements in § 1904.41 of this final rule conflict with the confidentiality provisions of the ADA.

Other Issues

Alternate Forms

Some commenters commented that the requirement for electronic submission of part 1904 injury and illness data will lead to the elimination of alternate or equivalent recordkeeping forms by employers (Exs. 1385, 1399). Littler Mendelson, P.C. commented: "Many employers utilize equivalent forms—particularly insurance and accident investigation forms in place of the Form 301. In establishing a requirement for electronic reporting in a particular software format OSHA will be mandating the use of a specific form and eliminating the widespread use of equivalent forms by employers. This change has not been identified or evaluated (benefits, or lack thereof) under the Paperwork Reduction Act provisions applicable to this rulemaking. Littler believes that the incremental benefit (if any) proposed in this rulemaking is significantly outweighed by the increased paperwork duplication which would be created by the use of mandatory forms and elimination of equivalent forms" (Ex. 1385).

In response, OSHA notes that existing § 1904.29(a) provides that employers must use the OSHA 300 Log, 301 Incident Report, and 300A Annual Summary, or equivalent forms, when recording injuries and illnesses under part 1904. Section 1904.29(b)(4) states that an equivalent form is one that has the same information, is as readable and understandable, and is completed using the same instructions as the OSHA form it replaces. OSHA is aware that many employers use an insurance form instead of the 301 Incident Report, or supplement an insurance form by adding any additional information required by OSHA.

As discussed above, under the final rule, employers have two options for submitting recordkeeping data to OSHA's secure Web site. First, employers can directly enter data in a web form. Second, employers will be provided with a means of electronically transmitting the information, including information from equivalent forms, to OSHA. This is similar to how BLS collects data from establishments under the SOII. Accordingly, the final rule does not change the option for employers to use alternate or equivalent forms when recording OSHA injuries and illnesses.

No Fault Recordkeeping Policy

There were many comments that the proposed rule would reverse OSHA's long-standing "no fault" recordkeeping policy (Exs. 0160, 0174, 0179, 0192, 0218, 0224, 0240, 0251, 0255, 1084, 1091, 1092, 1093, 1109, 1113, 1123, 1191, 1192, 1194, 1197, 1199, 1200, 1214, 1218, 1272, 1273, 1276, 1279, 1323, 1324, 1328, 1329, 1334, 1336, 1338, 1342, 1343, 1349, 1359, 1370, 1386, 1391, 1394, 1397, 1399, 1401, 1411, 1427). For example, the Coalition for Workplace Safety commented that "[i]n 2001, OSHA revised the recordkeeping requirements and the foundation of those revisions in what

OSHA deemed a "no-fault" system . . . For a variety of reasons OSHA concluded that a "geographic" presumption was the most comprehensive way to achieve Congress's objective for determining work-related injuries and illness. However, at the same time, OSHA recognized that the "geographic" presumption did not necessarily correlate to an employer's behavior and therefore injuries and illness that were beyond an employer's control would be recorded . . . [n]ow, OSHA intends to use this no-fault system to target employers for enforcement efforts, to shame employers into compliance, to allow members of the public to make decisions about with which companies to do business, and to allow current employees to compare their workplaces to the "best" workplaces for safety and health. This proposed regulation fundamentally upends the no-fault system that OSHA originally adopted in 2001" (Ex. 1411). The International Association of Drilling Contractors (IADC) also commented that "the presumption under the NPRM is that all injuries or illnesses are preventable, suggesting all incidents are the fault of the employer. The proposal essentially turns the "no fault" reporting system into one where employers will be blamed for idiosyncratic events arising as a result of forces beyond their control or actions by workers in direct contravention of workplace rules. This is a clear abandonment of the "no-fault" system in favor of OSHA's controversial and counterproductive "regulation by shaming" enforcement doctrine. Surprisingly, OSHA fails to even acknowledge its reversal, or provide any justification or an analysis for this significant change" (Ex. 1199).

In response, OSHA disagrees with commenters who commented that the Agency has reversed its "no fault" recordkeeping policy. The Note to § 1904.0 of OSHA's existing recordkeeping regulation continues to provide that the recording or reporting of a work-related injury, illness, or fatality does not mean that an employer or employee was at fault, that an OSHA rule has been violated, or that the employee is eligible for workers' compensation or other benefits. As noted elsewhere in this preamble, the purpose of this rulemaking is to improve workplace safety and health through the collection of useful, accessible, establishment-specific injury and illness data to which OSHA currently does not have direct, timely, and systematic access. The information acquired through this final rule will assist employers, employees, employee representatives, researchers, and the government to better identify and correct workplace hazards.

OSHA also disagrees with commenters who suggested that the Agency will use the "no fault" recordkeeping system to target employers for enforcement efforts. As discussed elsewhere in this preamble, and consistent with the Agency's longstanding practice, OSHA will use a neutral administrative plan when targeting employers for onsite inspection, similar to how the Agency has administered enforcement activities under the Site-Specific Targeting program.

Section 1904.41(a)(3) Seems To Give OSHA Unlimited Power

Andrew Sutton commented that the language in proposed § 1904.41(a)(3) appears to give OSHA "unfettered discretion." This section would have provided that upon notification, you must electronically send to OSHA or OSHA's designee the requested information, at the specified time interval, from the records that you keep under part 1904. According to the commenter, this section might be seen to give too much power to OSHA for *ad hoc* data collection: "In fact, the authority contained in this section could be said to make the whole rest of 1904.41 redundant; OSHA could enact the whole rest of the proposed regulation via the power granted here." (Ex. 0245).

In response, OSHA notes that, like the proposed rule, § 1904.41(a)(3) of the rule requires that, upon request, employers must electronically submit their OSHA part 1904 records to OSHA or OSHA's designee. This section replaces OSHA's existing regulation at § 1904.41, *Annual OSHA injury and illness survey of ten or more employers*. In recent years, OSHA has used the authority in § 1904.41 to conduct surveys through the OSHA Data Initiative (ODI).

It has never been OSHA's intention to exercise unfettered discretion when collecting injury and illness records. Like the existing regulation, § 1904.41(a)(3) of the final rule provides OSHA with authority to conduct surveys of employers regarding their occupational injuries and illnesses. Historically, the information collected through these surveys has assisted OSHA in identifying trends in workplace hazards, evaluating the effectiveness of OSHA enforcement activities, and gathering information for the promulgation of new occupational safety and health standards and regulations.

OSHA further notes that data collection under final § 1904.41(a)(3) would be subject to the Paperwork Reduction Act, which provides that federal agencies generally cannot conduct or sponsor a collection of information, and the public is not required to respond to an information collection, unless it is approved by OMB and displays a valid OMB Control Number. Also, pursuant to the PRA, notice of information collections must be published in the **Federal Register**. As a result, employers will be able to determine which employers are within a survey group and which information will be collected each year before the survey begins. Once a survey has been given an OMB control number under the PRA, any substantive or material modification would require a new PRA clearance.

In addition, final § 1904.41(b)(7) provides that employers who are partially exempt from keeping injury and illness records under existing §§ 1904.1 and/or 1904.2 are required to submit recordkeeping data only if OSHA notifies them they will be required to participate in a particular information collection under § 1904.41(a)(3). OSHA will notify these employers in writing in advance of the year for which injury and illness records will be required.

D. The Final Rule

The final rule is similar to the proposed rule in requiring employers to electronically submit part 1904 records to OSHA. However, there are also several differences from the proposed rule. The major differences between the final rule and the proposed rule include the following:

1. In the final rule, establishments with 250 or more employees that are required to keep part 1904 records must electronically submit some of the information from the three recordkeeping forms that they keep under part 1904 (OSHA Form 300A Summary of Work-Related Injuries and Illnesses, OSHA Form 300 Log of Work-Related Injuries and Illnesses, and OSHA Form 301 Injury and Illness Incident Report) to OSHA or OSHA's designee once a year. In the proposed rule, these establishments would have been required to electronically submit all of the information from the OSHA Form 300 and OSHA Form 301 quarterly, and electronically submit all of the information from the OSHA Form 300A annually.

2. In the final rule, for establishments with 20 to 249 employees, the list of designated industries who must report in appendix A to subpart E of part 1904

is based on a three-year average of BLS data from 2011, 2012, and 2013. In the proposed rule, the list of designated industries in appendix A to subpart E of part 1904 would have been based on one year of BLS data from 2009.

Under the final rule, employers have the following requirements:

1. § 1904.41(a)(1)—Establishments with 250 or more employees that are required to keep part 1904 records must electronically submit the required information from the three recordkeeping forms that they keep under part 1904 (OSHA Form 300A Summary of Work-Related Injuries and Illnesses, OSHA Form 300 Log of Work-Related Injuries and Illnesses, and OSHA Form 301 Injury and Illness Incident Report) to OSHA or OSHA's designee annually. This information must be submitted no later than March 2 of the year after the calendar year covered by the form. The establishments are not required to submit the following information:

a. Log of Work-Related Injuries and Illnesses (OSHA Form 300): Employee name (column B).

b. Injury and Illness Incident Report (OSHA Form 301): Employee name (field 1), employee address (field 2), name of physician or other health care professional (field 6), facility name and address if treatment was given away from the worksite (field 7).

2. § 1904.41(a)(2)—Establishments with 20–249 employees that are classified in a designated industry listed in appendix A to subpart E of part 1904 must electronically submit the required information from the OSHA Form 300A annually to OSHA or OSHA's designee. This information must be submitted no later than March 2 of the year after the calendar year covered by the form.

3. § 1904.41(a)(3)—Establishments must electronically submit the requested information from their part 1904 records to OSHA or OSHA's designee after notification from OSHA.

Overall, the final rule's provisions requiring regular electronic submission of injury and illness data will allow OSHA to obtain a much larger database of timely, establishment-specific information about injuries and illnesses in the workplace. This information will help OSHA use its resources more effectively by enabling OSHA to identify the workplaces where workers are at greatest risk. This information will also help OSHA establish a comprehensive database that the Agency, researchers, and the public can use to identify hazards related to reportable events and to identify industries and processes where these hazards are prevalent. The change from quarterly to annual reporting of information from OSHA Form 300 and OSHA Form 301 by establishments with 250 or more employees will also lessen the burden of data collection on both employers and OSHA.

Note that OSHA will phase in implementation of the data collection system. In the first year, all establishments required to routinely submit information under the final rule will be required to submit only the information from the Form 300A (by July 1, 2017). In the second year, all establishments required to routinely submit information under the final rule will be required to submit all of the required information (by July 1, 2018). This means that, in the second year, establishments with 250 or more employees that are required to routinely submit information under the final rule will be responsible for submitting information from the Forms 300, 301, and 300A. In the third year, all establishments required to routinely submit under this final rule will be required to submit all of the required information (by March 2, 2019). This means that beginning in the third year (2019), establishments with 250 or more employees will be responsible for submitting information from the Forms 300, 301, and 300A, and establishments with 20–249 employees in an industry listed in appendix A to subpart E of part 1904 will be responsible for submitting information from the Form 300A by March 2 each year. This will provide sufficient time to ensure comprehensive outreach and compliance assistance in advance of implementation.

In addition, consistent with E.O. 13563, OSHA plans to conduct a retrospective review, once the Agency has collected three full years of data. OSHA will use the findings of the retrospective review to assess the electronic submission requirements in the final rule and modify them as appropriate and feasible.

IV. Section 1902.7—Injury and Illness Recording and Reporting Requirements

In 1997, OSHA issued a final rule at § 1904.17, *OSHA Surveys of 10 or More Employers* that required employers to submit occupational injury and illness data to OSHA when sent a survey form. The § 1904.17 rule enabled the Agency to conduct a mandatory survey of the 1904 data, which was named the OSHA Data Initiative (ODI). When OSHA issued the 1997 rule, the Agency determined that the States were not required to adopt a rule comparable to the federal § 1904.17 rule (62 FR 6441).

In 2001, § 1952.4(d) (now § 1902.7(d)) was added to the final rule to continue to provide the States with the flexibility to participate in the OSHA Data Initiative under the federal requirements or the State's own regulation (66 FR 5916–6135). At its outset, Federal OSHA conducted the OSHA data collection in all of the states, including those which administered approved State Plans. However, Federal OSHA then began to collect data only in the State-Plan States that wished to participate. The current § 1902.7(d) allowed the individual States to decide, on an annual basis, whether or not they would participate in the OSHA data collection. If the State elected to participate, the State could either adopt and enforce the requirements of current § 1904.41 as an identical or more stringent State regulation, or could defer to the federal regulation and federal enforcement with regard to the mandatory nature of the survey. If the State deferred to the current federal § 1904.41 regulation, OSHA's authority to implement the ODI was not affected either by operational agreement with a State-Plan State or by the granting of final State-Plan approval under section 18(e).

In this rulemaking, the proposed rule would have required State-Plan States to adopt requirements identical to those in 29 CFR 1904.41 in their recordkeeping and reporting regulations as enforceable State requirements, as provided in section 18(c)(7) of the OSH Act. The data collected by OSHA as authorized by § 1904.41 would have been made available to the State-Plan States. Nothing in any State Plan would have affected the duties of employers to comply with § 1904.41.

Three State-Plan States submitted comments on the proposed rule—Kentucky (Ex. 208), North Carolina (Ex. 1195), and California (Ex. 1395). However, they did not comment specifically on this part of the proposed rule. OSHA also did not receive any other comments on this part of the proposed rule.

The final rule is the same as the proposed rule. State-Plan States must adopt requirements identical to those in 29 CFR 1904.41 in their recordkeeping and reporting regulations as enforceable State requirements, as provided in section 18(c)(7) of the OSH Act. OSHA will make the data collected by OSHA under this final rule available to the State Plan States. Nothing in any State plan will affect the duties of employers to comply with § 1904.41.

V. Section 1904.35 and Section 1904.36

A. Background

One of the goals of the final rule is to ensure the completeness and accuracy of injury and illness data collected by employers and reported to OSHA. Therefore, § 1904.35 of the final rule contains three new provisions that promote complete and accurate reporting of work-related injuries and illnesses by requiring employers to provide certain information on injury and illness reporting to employees, clarifying that employer reporting procedures must be reasonable, and prohibiting employers from retaliating against employees for reporting work-related injuries and illnesses, consistent with the existing prohibition in section 11(c) of the OSH Act.

In the initial comment period and at the public meeting, many commenters expressed concern that the public availability of OSHA data would motivate some employers to under-record injuries and illnesses, in part by attempting to reduce the number of recordable injuries and illness their employees report to them. *See, e.g.,* Exs. 0114, 1327, 1647, 1648, 1651, 1675, 1695. Exs. 0165, 01–09–2014 Tr. at 54–55; 01–10–2014 Tr. at 52–55. In addition, commenters in both comment periods pointed to numerous studies finding that under-recording is already a serious issue. *See, e.g.,* Exs. 1675, 1679, 1685, 1695. OSHA concludes that the rulemaking record supports these concerns. Therefore, this final rule includes provisions intended to promote accurate recording of work-related injuries and illnesses by preventing the under-recording that arises when workers are discouraged from reporting these occurrences. The rule also establishes an additional mechanism for OSHA to enforce the existing statutory prohibition on employer retaliation against employees.

Specifically, the rule makes three changes to §§ 1904.35 and 1904.36 consistent with the proposed changes set forth in the August 14, 2014 Supplemental Notice of Proposed Rulemaking. The final rule (1) requires employers to inform employees of their right to report work-related injuries and illnesses free from retaliation; (2) clarifies the existing implicit requirement that an employer's procedure for reporting work-related injuries and illnesses must be reasonable and not deter or discourage employees from reporting; and (3) prohibits employers from retaliating against employees for reporting work-related injuries or illnesses, consistent with the existing prohibition in section 11(c) of the OSH Act.

The final rule also makes a technical edit to § 1904.35(a)(3) to clarify that the rights of employees and their representatives to access injury and illness records are governed by § 1904.35(b)(2). Section 1904.35(a)(3) does not alter any of the substantive rights or limitations contained in § 1904.35(b)(2).

B. The Proposed Rule

On January 9 and 10, 2014, OSHA held a public meeting to discuss the November 8, 2013 Notice of Proposed Rulemaking. Many meeting participants expressed concern that the proposal to publish establishment-specific injury and illness data on OSHA's publicly available Web site might cause an increase in the number of employers that adopt policies or practices that have the effect of discouraging or deterring employees from reporting, including policies that result in retaliation against employees who report work-related injuries and illnesses. *See, e.g.,* Exs. 0165, 01–09–2014 Tr. at 33–40. Such policies and practices, when successful in deterring employee reporting, would undermine the benefits of the rule by compromising the accuracy of records and result in injustice for employees who do report their work-related injuries and illnesses and then suffer retaliation for doing so. OSHA seeks to ensure that employers, employees, and the public have access to the most accurate data possible about injuries and illnesses in workplaces so that they can take the most appropriate steps to protect worker safety and health.

Therefore, on August 14, 2014, OSHA issued a Supplemental Notice of Proposed Rulemaking to address this issue. OSHA requested comment on "whether to amend the proposed rule to (1) require that employers inform their employees of their right to report injuries and illnesses; (2) require that any injury and illness reporting requirements established by the employer be reasonable and not unduly burdensome; and (3) prohibit employers from taking adverse action against employees for reporting injuries and illnesses."

Some commenters took issue with procedural aspects of the supplemental notice to the propose rule. A few commenters asserted that the supplemental notice to the proposed rule denied the public the opportunity to meaningfully comment because it did not include proposed regulatory text and was not specific enough about what conduct was to be prohibited. Exs. 1566, 1650. However, under the Administrative Procedure Act, proposed regulatory text is not required; agencies must only include "either the terms or substance of the proposed rule or a description of the subjects and issues involved." 5 U.S.C. 553(b)(3). Here, the proposal explained the substance of the proposed rule and the subjects and issues involved. In addition, the specificity and detail of the comments OSHA received indicate that commenters understood the issues under discussion. Furthermore, as discussed below, the final regulatory text closely tracks the concepts and language used in the proposal, meaning the proposal provided sufficient notice to the public of the conduct to be prohibited. *See Chocolate Mfrs. Ass'n* v. *Block,* 755 F.2d 1098, 1105 (4th Cir. 1985) (notice is sufficient as long as the final rule is a "logical outgrowth" from the notice). Therefore, the supplemental notice to the proposed rule provided adequate notice for commenters.

Other commenters, including the American Coatings Association, stated that the amendments suggested by the supplemental proposal were outside the scope of the original November 8, 2013 proposal (Ex. 1548). OSHA agrees that these changes to §§ 1904.35 and 1904.36 were outside the scope of the original proposal. That is why OSHA published a supplemental proposal and extended the public comment period. The final amendments to §§ 1904.35 and 1904.36 are within the scope of the supplemental proposal, and are therefore permissible under the Administrative Procedure Act.

C. The Final Rule

The final rule includes three new provisions in § 1904.35. These provisions follow directly and logically from the August 14, 2014 Supplemental Notice of Proposed Rulemaking. First, the final rule amends paragraphs (a)(2) and (b)(1)(iii) to require employers to inform employees of their right to report work-related injuries and illnesses free from retaliation. Second, paragraph (b)(1)(i) of the final rule clarifies that the reporting method already implicitly required by this section must be reasonable and not deter or discourage employees from reporting. And third, paragraph (b)(1)(iv) of the final rule prohibits employers from retaliating against employees for reporting work-related injuries or illnesses under section 1904.35 consistent with the existing prohibition contained in section 11(c) of the OSH Act.

Section 1904.35, Paragraphs (a)(2) and (b)(1)(iii): Employee Information on Reporting

The final rule strengthens paragraph (a) of § 1904.35 by expanding the previous requirement for employers to inform employees how to report work-related injuries and illnesses so that the rule now includes a mandate to inform employees that they have a right to report work-related injuries and illnesses free from retaliation by their employer as described in paragraph (b)(1)(iii) of the final rule. OSHA has determined that this enhanced information-provision requirement will improve employee and employer understanding of their rights and responsibilities related to injury and illness reporting and thereby promote more accurate reporting.

The rulemaking record supports OSHA's determination that requiring employers to inform employees of their reporting rights will improve the quality of employers' injury and illness records. Commenters provided numerous examples and studies showing that many employees avoid reporting injuries and illnesses because they are afraid that doing so will result in retaliation. For example, Lipscomb *et al.* (2012) found that many carpenters' apprentices avoided reporting injuries and filing workers compensation claims because they feared discipline, termination, or other adverse action. Exs. 1648, 1675, 1695. Other researchers discovered similar fears among a variety of worker populations. *See, e.g.,* Moore *et al.* (2013) (construction), Southern Poverty Law Center and Alabama Appleseed (2013) (poultry processing), Nebraska Appleseed (2009) (meatpacking), Lashuay and Harrison (2006) (California low-wage workers), Scherzer *et al.* (2005) (hotel room cleaners), Pransky *et al.* (1999) (manufacturing) (Exs. 1648, 1675, 1685, 1695). *See also* below regarding actual retaliation against workers for reporting work-related injuries and illnesses. A 2009 survey by the U.S. Government Accountability Office (GAO) found that two thirds of occupational health practitioners observed worker fear of disciplinary action for reporting workplace injuries and illnesses (Exs. 1675, 1695). Although some commenters questioned whether underreporting is a real problem, the examples and studies cited above have convinced OSHA that employee fear of retaliation is a real barrier to reporting of work-related injuries and illnesses and that the information-provision requirements in the final rule will allay workers' fear of retaliation and lead to more accurate reporting.

Section 1904.35(b)(1)(i): Reasonable Reporting Procedures

The final rule amends paragraph (b)(1)(i) of § 1904.35 to state explicitly that employer procedures for employee reporting of work-related illnesses and injuries must be reasonable. The previous version of § 1904.35(b)(1)(i) already required employers to set up a way for employees to report work-related injuries and illnesses promptly. The final rule adds new text to clarify that reporting procedures must be reasonable, and that a procedure that would deter or discourage reporting is not reasonable, as explained in a 2012 OSHA enforcement memorandum. *See* OSHA Memorandum re: *Employer Safety Incentive and Disincentive Policies and Practices* (Mar. 12, 2012). Although the substantive obligations of employers will not change, the final rule will have an important enforcement effect for the minority of employers who do not currently have reasonable reporting procedures.

The rulemaking record supports OSHA's decision to include these clarifying revisions to paragraph (b)(1)(i) in the final rule. Commenters cited studies suggesting that employees are deterred from reporting injuries and illnesses where the procedure for doing so is too difficult. For example, Scherzer *et al.* (2005) found that many hotel room cleaners failed to report work-related pain to management because it took too many steps to do so (Ex. 1695). The revisions to paragraph (b)(1) clarify that such unduly burdensome reporting procedures would violate the final rule.

Commenters also raised concerns about rigid prompt-reporting requirements in place at some workplaces that have resulted in employee discipline for late reporting even though employees could not reasonably have reported their injuries or illnesses earlier. *See, e.g.,* Exs. 1675, 1679, 1695, 1696. Several of these commenters highlighted issues related to musculoskeletal disorders because such disorders develop over time and therefore cannot be reported immediately after an individual incident. The comment by the AFL–CIO (Ex. 1695) typifies the views of these commenters:

> Many employers have policies that require the immediate reporting of a work-related injury by the worker, and for some employers failure to follow this requirement will result in discipline, regardless of the circumstances. In some cases workers may be unaware that they have suffered an injury, since the pain or symptoms do not manifest until later . . . This is particularly true for musculoskeletal injuries. The worker reports the injury when they recognize it has occurred, but are disciplined because the reporting did not occur until after the event that caused the injury occurred.

OSHA shares these concerns. Employer reporting requirements must account for injuries and illnesses that build up over time, have latency periods, or do not initially appear serious enough to be recordable. The United Food and Commercial Workers International Union provides several examples of food processing workers receiving discipline for "late" reporting where it was not reasonable to have expected the injured employee to report earlier. In one such case, a worker reported shoulder and neck pain that had developed gradually due to work-related repetitive motions beginning one week earlier. Although there was no single incident that precipitated the injury, the worker received a "final warning" for failure to "timely report an injury" (Ex. 1679). This policy was not reasonable because it did not allow for reporting within a reasonable time after the employee realized that he or she had suffered a work-related injury.

OSHA disagrees with comments that express support for employers who require immediate reporting of injuries and illnesses on the grounds that such requirements are necessary for accurate recordkeeping, to prevent fraud, and to address injuries before they get worse (Exs. 1449, 1658, 1663). OSHA recognizes that employers have a legitimate interest in maintaining accurate records and ensuring that employees are reporting genuine work-related injuries and illnesses in a reasonably prompt manner. These interests, however, must be balanced with fairness to employees who cannot reasonably discover their injuries or illnesses within a rigid reporting period and with the overriding objective of part 1904 to ensure that all recordable work-related injuries and illnesses are recorded. Accordingly, for a reporting procedure to be reasonable and not unduly burdensome, it must allow for reporting of work-related injuries and illnesses within a reasonable timeframe after the employee has realized that he or she has suffered a work-related injury or illness.

A few commenters questioned whether reporting of work-related injuries and illnesses is properly characterized as an employee right, as opposed to an employee obligation. The Act provides that employees and employers "have separate but dependent responsibilities and rights with respect to achieving safe and healthful working conditions." 29 U.S.C. 651(b)(2). Part 1904 imposes the obligation to record and report work-related injuries and illnesses on the employer. *See* 29 CFR 1904.4. In turn, employers may require employees to report work-related injuries and illnesses, as long as the procedures for doing so are reasonable and the employer does not retaliate against employees when they report.

Some commenters expressed concern that the requirement described in the proposed rule—that reporting procedures "be reasonable and not unduly burdensome"—was ambiguous and vague. *See, e.g.,* Exs. 1532, 1566. The final rule provides that employers must establish a "reasonable" procedure for employees to report work-related injuries and illnesses and clarifies that a reporting procedure is not reasonable if it would deter or discourage a reasonable employee from reporting. OSHA did not include the phrase "unduly burdensome" in the final rule. The "reasonable person" standard is an objective standard that is well-established and applied in many areas of the law, and which can be applied by laypeople without the use of experts. *See Godfrey* v. *Iverson,* 559 F.3d 569, 572 (D.C. Cir. 2009). OSHA believes the final rule's requirement that employers establish a reporting procedure that would not deter or discourage a reasonable employee from reporting work-related injuries and illnesses is sufficiently clear to notify employers of their obligations under the rule while giving employers flexibility to design policies that make sense for their workplaces. Like the previous version of the rule, the final rule imposes a performance requirement rather than prescribing specific procedures employers must establish, and therefore gives employers flexibility to tailor their programs to the needs of their workplaces. *See* 66 FR 6052 (Jan. 19, 2001).

Section 1904.35(b)(1)(iv): Prohibition of Discrimination Against Employees for Reporting a Work-Related Injury or Illness

The final rule adds paragraph (b)(1)(iv) to § 1904.35 to incorporate explicitly into part 1904 the existing prohibition on retaliating against employees for reporting work-related injuries or illnesses that is already imposed on employers under section 11(c) of the OSH Act. As discussed in the Legal Authority section of this preamble, paragraph (b)(1)(iv) of the final rule does not change the substantive obligations of employers. Rather, paragraph (b)(1)(iv) provides OSHA an enhanced enforcement tool for ensuring the accuracy of employer injury and illness logs. Section 1904.36 of the final rule further clarifies that section 11(c) also prohibits retaliating against employees for reporting work-related injuries or illnesses, as explained in the 2012 OSHA enforcement memorandum. *See* OSHA Memorandum re: *Employer Safety Incentive and Disincentive Policies and Practices* (Mar. 12, 2012). OSHA believes only a minority of employers engages in prohibited retaliation, and the final rule will enable more effective enforcement against those employers.

A number of commenters stated that there is no need to amend § 1904.35 to prohibit retaliating against employees for reporting injuries and illnesses because Section 11(c) of the Act already prohibits such retaliation. *See, e.g.,* Exs. 1473, 1549, 1655, 1662. OSHA disagrees. Although the substantive obligations of employers will not change under the new rule, the rule will have an important enforcement effect. Section 11(c) only authorizes the Secretary to take action against an employer for retaliating against an employee for reporting a work-related illness or injury if the employee files a complaint with OSHA within 30 days of the retaliation. 29 U.S.C. 660(c). The final rule provides OSHA with an additional enforcement tool for ensuring the accuracy of work-related injury and illness records that is not dependent on employees filing complaints on their own behalf. Some employees may not have the time or knowledge necessary to file a section 11(c) complaint or may fear additional retaliation from their employer if they file a complaint. The final rule allows OSHA to issue citations to employers for retaliating against employees for reporting work-related injuries and illnesses and require abatement even if no employee has filed a section 11(c) complaint.

Additionally, as noted by one commenter, adding a prohibition on retaliation to part 1904 provides clear notice to employers of what actions are prohibited, which will help to prevent retaliatory acts from occurring in the first place (Ex. 1561). In other words, the final rule serves a preventive purpose as well as a remedial one. The new rule also differs from section 11(c) because it is specifically designed to promote accurate recordkeeping. For comparison, under the medical removal protection (MRP) provision of the lead standard, if an employer denies MRP benefits in retaliation for an employee's exercise of a right under the Act, OSHA can cite the employer and seek the benefits as abatement, because payment of the benefits is important to vindicate the health interests underlying MRP; section 11(c) is not an exclusive remedy. *United Steelworkers, AFL–CIO* v. *St. Joe Resources,* 916 F.2d 294, 298 (5th Cir. 1990). Likewise, here OSHA can cite employers under the final rule in order to advance the rule's purpose of promoting accurate recordkeeping, which is grounded in OSHA's authority under Section 8(c)(2) of the OSH Act (29 U.S.C. 657(c)(2)) to require employers to maintain accurate records of work-related injuries and illnesses.

OSHA anticipates that feasible abatement methods for violations of paragraph (b)(1)(iv) will mirror some of the types of remedies available under section 11(c); the goal of abatement would be to eliminate the source of the retaliation and make whole any employees treated adversely as a result of the retaliation. For example, if an employer terminated an employee for reporting a work-related injury or illness, a feasible means of abatement would be to reinstate the employee with back pay. *See McKennon* v. *Nashville Banner Pub. Co.,* 513 U.S. 352, 362 (1995) (citing *Franks* v. *Bowman Transp. Co.,* 424 U.S. 747, 764 (1976)) ("[T]he object of compensation is to restore the employee to the position he or she would have been in absent the discrimination."); *St. Joe Resources,* 916 F.2d at 299 (Occupational Safety and Health Review Commission may order employers to pay back pay as abatement for violations of the MRP requirements). If an employer retaliates against an employee for reporting a work-related illness or injury by denying a bonus to a group of employees, feasible means of abatement could include revising the bonus policy to correct its retaliatory effect and providing the bonus retroactively to all of the employees who would have received it absent the retaliation.

Some commenters acknowledged that the proposed rule gives OSHA additional enforcement tools but argued that doing so impermissibly interferes with section 11(c) by infringing on an employee's right to bring a section 11(c) claim and by eliminating section 11(c)'s 30-day window for employees to bring complaints. The final rule does not abrogate or interfere with the rights or restrictions contained in section 11(c). An employee who wishes to file a complaint under section 11(c) may do so within the statutory 30-day period regardless of whether OSHA has issued, or will issue, a citation to the employer for violating the final rule. OSHA believes that many employees will continue to file 11(c) complaints because of the broader range of equitable relief and punitive damages available under that provision. Finally, one commenter suggested that retaliation cases are too complex and fact-based to be suitable subjects of enforcement citations. Ex. 1645. OSHA disagrees. OSHA regularly issues citations based on complex factual scenarios and will provide its staff with appropriate training about enforcing the final rule.

Discrimination citable under paragraph (b)(1)(iv) could include termination, reduction in pay, reassignment to a less desirable position, or any other adverse action that "could well dissuade" a reasonable employee from reporting a work-related injury or illness. *See Burlington Northern & Santa Fe Railway Co.* v. *White,* 548 U.S. 53, 57 (2006) (holding that the test for determining whether a particular action is materially adverse is whether it would deter a reasonable person from engaging in protected activity under Title VII). The *Burlington Northern* case considered whether a particular action would deter a reasonable person from filing a claim of sex discrimination. In the context of the final rule, the test would be whether the action would deter a reasonable employee from reporting a work-related injury or illness. Commenters placed substantial emphasis on three specific types of policies, discussed in more detail below: Disciplinary policies, post-accident drug testing policies, and employee incentive programs.

Commenters cited numerous examples of employers disciplining employees who report injuries regardless of whether the employee violated company safety policy. *See, e.g.,* Exs. 1675, 1679, 1681, 1691, 1695, 1696. Although it is an employer's duty to enforce safety rules, disciplining an employee simply for reporting an injury or illness deters employees from reporting injuries and illnesses without improving safety. Numerous commenters identified cases in which employers suspended, reassigned, or even terminated employees simply for being injured. *See, e.g.,* Ex. 1695, attachment 16 (employee suspended, placed on work restrictions, and threatened with termination for having too many OSHA-recordable injuries), Ex. 1675 (employees suspended for having been injured), Ex. 1681 (employees harassed and terminated for reporting injuries or filing for workers compensation), Ex. 1679 (employees terminated for being injured). Some commenters pointed out progressive disciplinary policies involving increasingly serious sanctions for additional reports. *See, e.g.,* Exs. 1675, 1695. Others pointed to employer policies that make employees who report injuries ineligible for promotions (Ex. 1675) or automatically give poor performance evaluations to employees who report OSHA-recordable injuries (Ex. 1696). A report by the U.S. House of Representatives Committee on Education and Labor made a similar finding that many forms of "direct intimidation" are used by employers to discourage reporting. *See Hidden Tragedy: Underreporting of Workplace Injuries and Illnesses,* Majority Staff Report by the Committee on Education and Labor, U.S. House of Representatives (June 2008); Exs. 1675, 1679, 1695. Under paragraph (b)(1)(iv) of the final rule, OSHA can issue citations to employers who discipline workers for reporting injuries and illnesses when no legitimate workplace safety rule has been violated.

In addition, the United Steel, Paper and Forestry, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW) identified a number of cases where employers engaged in pretextual disciplinary actions—asserting that an employee was being disciplined for violating a safety rule where the real reason was the employee's injury or illness report (Ex. 1675). This includes situations when reporting employees are disciplined more severely than other employees who worked in the same way, or when reporting employees are selectively disciplined for violation of vague work rules such as "work carefully" or "maintain situational awareness." Vague work rules are particularly subject to abuse by the employer and would not be considered legitimate workplace safety rules when they are used disproportionately to discipline workers who have reported an injury or illness. In contrast, a legitimate workplace safety rule should require or prohibit specific conduct related to employee safety or health so it can be applied fairly and not used as a pretext for retaliation. The AFL–CIO identified a series of cases in which a Michigan administrative law judge upheld findings of the Michigan Occupational Safety and Health Administration that AT&T used these types of vague safety policies as pretext for retaliating against employees who reported workplace injuries. *See* Ex. 1695 (citing *AT&T Servs.* v. *Aggeler,* No. D–11–242–1 (Mich. Admin. Hearing Sys., Jan. 13, 2013); *AT&T Servs.* v. *Wright,* No. D–11–101–1 (Mich. Admin. Hearing Sys., Apr. 8, 2013); *AT&T Servs.* v. *Swift,* No. D–11–200–1 (Mich. Admin. Hearing Sys., Mar. 6, 2013); *AT&T Servs.* v. *West,* No. D–11–311–1 (Mich. Admin. Hearing Sys., Apr. 23, 2013)). And even a legitimate work rule may not be applied selectively to discipline workers who report work-related illnesses or injuries but not employees who violate the same rule without reporting a work-related injury or illness. Paragraph (b)(1)(iv) of the final rule authorizes OSHA to issue citations to employers who engage in such pretextual disciplinary actions.

OSHA believes that the majority of employers do not discipline employees unless they have actually broken a legitimate workplace safety or health rule and do not selectively discipline employees who violate legitimate work rules only when they also report a work-related injury or illness. But in the minority of workplaces where employers may sanction employees for reporting, it is no surprise that workers are deterred from reporting because they fear the consequences of doing so. *See above* regarding worker fear of reporting work-related injuries and illnesses. Data collected during OSHA's National Emphasis Program on Injury and Illness Recordkeeping (Recordkeeping NEP) show that among the surveyed workplaces where such disciplinary policies exist, approximately 50 percent of workers reported that the policy deterred reporting. *See Analysis of OSHA's National Emphasis Program on Injury and Illness Recordkeeping,* Prepared for the Office of Statistical Analysis, Occupational Safety and Health Administration, by ERG (Nov. 1, 2013); Ex. 1835. Therefore, OSHA expects that enforcement of the provisions in the final rule will improve the rate and accuracy of injury and illness reporting.

OSHA received a number of comments expressing concern that this section of the final rule will have a chilling effect on employers disciplining employees who violate safety rules, thereby contributing to a less safe work environment. It is important to note that the final rule prohibits employers only from taking adverse action against an employee *because the employee reported* an injury or illness. Nothing in the final rule prohibits employers from disciplining employees for violating legitimate safety rules, even if the same employee who violated a safety rule also was injured as a result of that violation and reported that injury or illness (provided that employees who violate the same work rule are treated similarly without regard to whether they also reported a work-related illness or injury). What the final rule prohibits is retaliatory adverse action taken against an employee simply because he or she reported a work-related injury or illness.

Commenters also pointed to policies mandating automatic post-injury drug testing as a form of adverse action that can discourage reporting. *See, e.g.,* Exs. 1675, 1695. Although drug testing of employees may be a reasonable workplace policy in some situations, it is often perceived as an invasion of privacy, so if an injury or illness is very unlikely to have been caused by employee drug use, or if the method of drug testing does not identify impairment but only use at some time in the recent past, requiring the employee to be drug tested may inappropriately deter reporting. The U.S. House of Representatives Committee on Education and Labor has recognized that "to intimidate workers, employers may require that workers are tested for drugs or alcohol [after every incident or injury], irrespective of any potential role of drug intoxication in the incident" (Exs. 1675, 1679, 1695). The Committee also pointed to Scherzer *et al.* (2005), which found that 32 percent of surveyed Las Vegas hotel workers who reported work-related pain were forced to take drug tests, even though studies like Krause *et al.* (2005) show that such injuries are often caused by physical workload, work intensification, and ergonomic problems—not by workplace mistakes that could have been caused by drugs. *Id.* The American National Standards Institute (ANSI) has similarly recognized the need for drug testing programs to be "carefully designed and implemented to ensure employees are not discouraged from effective participation in [injury and illness reporting programs]" (Ex. 1695).

OSHA believes the evidence in the rulemaking record shows that blanket post-injury drug testing policies deter proper reporting. Morantz and Mas (2008) conducted a study on a large retail chain and found that post-accident drug testing caused a substantial reduction in injury claims. The authors found suggestive evidence that at least part of that reduction was due to the reduced willingness of employees to report accidents (Ex. 1675). Crant and Bateman (1989) describe privacy concerns and other individual factors that can affect employee willingness to participate in drug testing programs and report accidents. *Id.* OSHA's Recordkeeping NEP data also supports that hypothesis because many workers reported that such post-injury drug testing programs deterred reporting (Ex. 1695).

Some commenters stated their belief that drug testing of employees is important for a safe workplace; some expressed concern that OSHA planned a wholesale ban on drug testing (Exs. 1667, 1674). To the contrary, this final rule does not ban drug testing of employees. However, the final rule does prohibit employers from using drug testing (or the threat of drug testing) as a form of adverse action against employees who report injuries or illnesses. To strike the appropriate balance here, drug testing policies should limit post-incident testing to situations in which employee drug use is likely to have contributed to the incident, and for which the drug test can accurately identify impairment caused by drug use. For example, it would likely not be reasonable to drug-test an employee who reports a bee sting, a repetitive strain injury, or an injury caused by a lack of machine guarding or a machine or tool malfunction. Such a policy is likely only to deter reporting without contributing to the employer's understanding of why the injury occurred, or in any other way contributing to workplace safety. Employers need not specifically suspect drug use before testing, but there should be a reasonable possibility that drug use by the reporting employee was a contributing factor to the reported injury or illness in order for an employer to require drug testing. In addition, drug testing that is designed in a way that may be perceived as punitive or embarrassing to the employee is likely to deter injury reporting.

A few commenters also raised the concern that the final rule will conflict with drug testing requirements contained in workers' compensation laws. This concern is unwarranted. If an employer conducts drug testing to comply with the requirements of a state or federal law or regulation, the employer's motive would not be retaliatory and the final rule would not prohibit such testing. This is doubly true because Section 4(b)(4) of the Act prohibits OSHA from superseding or affecting workers' compensation laws. 29 U.S.C. 653(b)(4).

Finally, many commenters expressed concern with the retaliatory nature of the employee incentive programs at some workplaces, providing myriad examples. *See, e.g.,* Exs. 1661, 1675, 1679, 1695. Employee incentive programs take many forms. An employer might enter all employees who have not been injured in the previous year in a drawing to win a prize, or a team of employees might be awarded a bonus if no one from the team is injured over some period of time. Such programs might be well-intentioned efforts by employers to encourage their workers to use safe practices. However, if the programs are not structured carefully, they have the potential to discourage reporting of work-related injuries and illnesses without improving workplace safety. The USW provided many examples of employer incentive policies that could discourage reporting of work-related injuries and illnesses. Ex. 1675. One employer had a policy that involved periodic prize drawings for items such as a large-screen television; workers who reported an OSHA-recordable injury were excluded from the drawing. *Id.* The American College of Occupational and Environmental Medicine noted that many of its member physicians reported knowledge of situations where employers discouraged injury and illness reporting through incentive programs predicated on workers remaining "injury free," leading to peer pressure on employees not to report (Ex. 1661).

In addition, in recent years, a number of government reports have raised concerns about the effect of incentive programs on injury and illness reporting. A 2012 GAO study found that rate-based incentive programs, which reward workers for achieving low rates of reported injury and illnesses, may discourage reporting. Ex. 1695. Other, more positive incentive programs, which reward workers for activities like recommending safety improvements, did not have the same effect. A previous GAO study had also highlighted incentive programs as a cause of underreporting of work-related injuries and illnesses (Exs. 1675, 1695). The 2008 House Report listed examples of problematic incentive programs and found that "depending on how an incentive program is structured, reluctance to lose the bonus or peer pressure from other crew members whose prizes are also threatened reduces the *reporting* of injuries and illnesses in the job, rather than reducing the actual number of workplace injuries and illnesses" (Exs. 1675, 1679, 1695). In 2006, a report by the California State Auditor found that an employee incentive program had likely caused the significant underreporting of injuries by the company working on reconstruction of a portion of the San Francisco Bay Bridge (Ex. 1695). The company offered employees monetary incentives up to $1,500 only if zero recordable injuries were reported. This kind of incentive program is especially likely to discourage reporting because not only will the injured employee not receive the prize after reporting an injury, but the employee is even less likely to report out of fear of angering or disappointing the coworkers who will also be denied the prize, or because the coworkers actively pressure the worker not to report.

OSHA has previously recognized that incentive programs that discourage employees from reporting injuries and illnesses by denying a benefit to employees who report an injury or illness may be prohibited by section 11(c). *See* OSHA Memorandum re:

Employer Safety Incentive and Disincentive Policies and Practices (Mar. 12, 2012); *see also* ANSI/AIHA Z10–2012, Ex. 1695, attachment 5 ("incentive programs . . . should be carefully designed and implemented to ensure employees are not discouraged from effective participation in [injury and illness reporting programs"). The same memorandum pointed out that, to the extent incentive programs cause under-reporting, they can result in under-recording of injuries and illnesses, which may lead to employer liability for inaccurate recordkeeping. The latter concern is what is being addressed by this final rule's prohibition on employers using incentive programs in a way that impairs accurate recordkeeping.

Some commenters expressed satisfaction with existing safety incentive programs that provide monetary incentives to employees who maintain low blood lead levels, and requested that OSHA not undermine such programs (Exs. 1488, 1654, 1683). OSHA does not intend the final rule to categorically ban all incentive programs. However, programs must be structured in such a way as to encourage safety in the workplace without discouraging the reporting of injuries and illnesses.

The specific rules and details of implementation of any given incentive program must be considered to determine whether it could give rise to a violation of paragraph (b)(1)(iv) of the final rule. It is a violation of paragraph (b)(1)(iv) for an employer to take adverse action against an employee for reporting a work-related injury or illness, whether or not such adverse action was part of an incentive program. Therefore, it is a violation for an employer to use an incentive program to take adverse action, including denying a benefit, because an employee reports a work-related injury or illness, such as disqualifying the employee for a monetary bonus or any other action that would discourage or deter a reasonable employee from reporting the work-related injury or illness. In contrast, if an incentive program makes a reward contingent upon, for example, whether employees correctly follow legitimate safety rules rather than whether they reported any injuries or illnesses, the program would not violate this provision. OSHA encourages incentive programs that promote worker participation in safety-related activities, such as identifying hazards or participating in investigations of injuries, incidents, or "near misses." OSHA's Voluntary Protection Program (VPP) guidance materials refer to a number of positive incentives, including providing t-shirts to workers serving on safety and health committees; offering modest rewards for suggesting ways to strengthen safety and health; or throwing a recognition party at the successful completion of company-wide safety and health training. *See Revised VPP Policy Memo #5: Further Improvements to the Voluntary Protection Programs* (August 14, 2014).

VI. Final Economic Analysis and Regulatory Flexibility Certification

A. Introduction

Executive Orders 12866 and 13563 require that OSHA estimate the benefits, costs, and net benefits of proposed and final regulations. Executive Orders 12866 and 13563, the Regulatory Flexibility Act, and the Unfunded Mandates Reform Act also require OSHA to estimate the costs, assess the benefits, and analyze the impacts of certain rules that the Agency promulgates. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

In the proposal, OSHA estimated that this rule would have economic costs of $11.9 million per year, including $10.7 million per year to the private sector, with costs of $183 per year for affected establishments with 250 or more employees and $9 per year for affected establishments with 20 or more employees in designated industries. The Agency believed that the annual benefits, while unquantified, significantly exceed the annual costs.

In this final rule, OSHA estimates that the rule will have economic costs of $15.0 million per year, including $14 million per year to the private sector with costs of $214 per year to affected establishments with 250 or more employees and $11.13 per year for affected establishments with 20 to 249 employees in designated industries. The Agency continues to believe that the annual benefits, while unquantified, significantly exceed the annual costs.

The final rule is not an "economically significant regulatory action" under Executive Order 12866 or the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1532(a)), and it is not a "major rule" under the Congressional Review Act (5 U.S.C. 801 *et seq.*). The Agency estimates that the rulemaking imposes far less than $100 million in annual economic costs. In addition, it does not meet any of the other criteria specified by UMRA or the Congressional Review Act for a significant regulatory action or major rule. This Final Economic Analysis (FEA) addresses the costs, benefits, and economic impacts of the final rule.

The final rule will make four changes to the existing recording and reporting requirements in part 1904. These changes in existing requirements differ somewhat from those in the proposed rule.

First, OSHA will require establishments that are required to keep injury and illness records under part 1904, and that had 250 or more employees in the previous year, to electronically submit the required information from all three OSHA recordkeeping forms to OSHA or OSHA's designee, on an annual basis.

Second, OSHA will require establishments that are required to keep injury and illness records under part 1904, had 20 to 249 employees in the previous year, and are in certain designated industries, to electronically submit the required information from the OSHA annual summary form (Form 300A) to OSHA or OSHA's designee, on an annual basis.

Third, OSHA will require all employers who receive notification from OSHA to electronically submit the requested information from their injury and illness records to OSHA or OSHA's designee. Any such notification will be subject to the approval process established by the Paperwork Reduction Act.

Fourth, OSHA will require employers to inform employees of their right to report injuries and illness and prohibit discrimination against employees who report injuries and illnesses.

The final rule does not add to or change any employer's obligation to complete, retain, and certify injury and illness records. The final rule also does not add to or change the recording criteria or definitions for these records. The only changes are that, under certain circumstances, employers will be obligated to submit information from these records to OSHA in an electronic format and to assure that employees have, and understand they have, a right to report injuries and illnesses without fear of discrimination. OSHA requested comments and received many helpful comments throughout this process. For example, one commenter suggested that OSHA should run a pilot program of electronic reporting (Ex. 1109). In many ways, OSHA's previous collection of these data through the OSHA Data Initiative (the ODI) was a lengthy pilot program, and a successful one which lasted for almost 20 years. This final rule is an extension of that effort, by expanding the collection to involve more establishments and to collect a larger set of injury and illness data. For many of the establishments affected by this final rule, the data submitted will be identical to the data that was collected by the ODI.

As OSHA explained in the preamble to the proposed rule, the electronic submission of information to OSHA would be a relatively simple and quick matter. In most cases, submitting information to OSHA would require several basic steps: (1) Logging on to OSHA's web-based submission system; (2) entering basic establishment information into the system (the first time only); (3) copying the required injury and illness information from the establishment's records into the electronic submission forms; and (4) hitting a button to submit the information to OSHA. In many cases, especially for large establishments, OSHA data are already kept electronically, so step 3 would be less time-intensive relative to cases in which records are kept on paper. The submission system, as anticipated, would also save an establishment's information from one submission to the next, so step 2 might be eliminated for most establishments after the first submission.

Many commenters questioned whether the process would be this simple. OSHA will first examine the costs of the activities outlined above, and then address a wide variety of comments on other costs in addition to those for the activities outlined above.

B. Costs

1. § 1904.41(a)(1)—Annual Electronic Submission of Part 1904 Records by Establishments With 250 or More Employees

In the Preliminary Economic Analysis (PEA), OSHA obtained the estimated cost of electronic data submission per establishment by multiplying the compensation per hour (in dollars) of the person expected to perform the task of electronic submission by the time required for the electronic data submission. OSHA then multiplied this cost per establishment by the estimated number of establishments that would be required to submit data, to obtain the total estimated costs of this part of the proposed rule. This methodology was retained in the FEA.

To estimate the compensation of the person expected to perform the task of electronic data submission in the PEA, OSHA suggested that recordkeeping tasks are most commonly performed by a Human Resource, Training, and Labor Relations Specialist, Not Elsewhere Classified (Human Resources Specialist). In the PEA, OSHA estimated compensation using May 2008 data from the BLS Occupational Employment Survey (OES), reporting a mean hourly wage of $28 for Human Resources Specialists, and June 2009 data from the BLS National Compensation Survey, reporting a mean fringe benefit factor of 1.43 for civilian workers in general. OSHA multiplied the mean hourly wage ($28) by the mean fringe benefit factor (1.43) to obtain an estimated total compensation (wages and benefits) for Human Resources Specialists of $40.04 per hour ([$28 per hour] × 1.43).

OSHA requested comments as to whether the Human Resources Specialist was a reasonable wage rate, and received only a few comments (Exs. 0211, 1110, 0194, 1198). Many comments on the subject of occupation performing the collection and submission stated that the use of a Human Resource Specialists was not reflective of their experience. For example, the Food Market Institute (FMI) commented, "For instance, while OSHA asserts the new responsibilities will be shouldered by human resources personnel, it is far more likely that each establishment's safety professionals will be burdened with the task." (Ex. 1198) One comment from the American Subcontractors Association stated, "Instead, among small and mid-sized ASA member firms, tasks like these are performed by high level management personnel. In larger construction firms, such tasks are likely to be performed by safety and health professionals" (Ex. 1322). Other commenters suggested that a more senior person would be needed to go over the data. Aimee Brooks of Western Agricultural Processors Association (WAPA) stated, "It is highly likely that upper level management would be inputting this information, as giving this information sensitive task to office staff at the workplace would be a liability to the business. If such responsibility is given to office staff, it would need to be accompanied with training regarding protecting sensitive information and privacy" (Ex. 1273).

OSHA believes that throughout the economy, relatively low-wage employees handle sensitive information, including PII such as employee Social Security numbers, payroll information, and customers' credit card information. OSHA further believes that specialized training is not required before handling PII. For example, many restaurants do not train wait staff specifically in the handling of credit card information.

OSHA does agree with commenters who argued that the average compensation for recordkeepers might be greater than for a human resources specialist. For this Final Economic Analysis (FEA), OSHA updated those compensation numbers using the same sources, but a different occupational classification. This change was made so that this regulation will be consistent with OSHA's 2014 recordkeeping paperwork package and OSHA's September 2014 recordkeeping regulation. For the FEA, OSHA estimated compensation using May 2014 data from the BLS Occupational Employment Survey (OES), reporting a mean hourly wage of $33.88 for Industrial Health and Safety Specialists, and December 2014 data from the BLS National Compensation Survey, reporting a mean fringe benefit factor of 1.44 for civilian workers in general. OSHA multiplied the mean hourly wage ($33.88) by the mean fringe benefit factor (1.44) to obtain an estimated total compensation (wages and benefits) for Industrial Health and Safety Specialists of $48.78 per hour ([$33.88 per hour] × 1.44). This represents an increase in the wage rate of 22 percent over the wage used in the PEA.

OSHA recognizes that not all firms assign the responsibility for recordkeeping to an Industrial Health and Safety Specialist. For example, a smaller firm may use a bookkeeper or a plant manager, while a larger firm may use a higher level specialist. However, OSHA believes that the calculated cost of $48.78 per hour is a reasonable estimate of the hourly compensation of a typical recordkeeper. In the case of a very small firm, this wage rate may exceed the owner or proprietor's wage. BLS data from the Quarterly Census of Employment and Wages (2014) show that the average weekly wage for a worker in a firm with 20 to 49 employees is $848 per week, while the average wage for a worker in a firm with 1,000 or more employees is $1,699 per week—nearly twice as high as the smaller firm.

For time required for the data submission in the PEA, OSHA used the estimated unit time requirements reported by BLS in their paperwork burden analysis for the Survey of Occupational Injuries and Illnesses (SOII) (OMB Control Number 1220–

0045, expires October 31, 2013).[1] BLS estimated 10 minutes per recordable injury/illness case for electronic submission of the information on Form 301 (Injury and Illness Incident Report) and Form 300 (Log of Work-Related Injuries and Illnesses). BLS also estimated 10 minutes per establishment, total, for electronic submission of the information on Form 300A (Summary of Work-Related Injuries and Illnesses). For the FEA, OSHA used, where appropriate, the values reported in the latest BLS SOII paperwork package (OMB Control Number 1220–0045, expires September 30, 2016).

Many of the comments on the 10 minutes originally estimated by OSHA for submitting the requested data were general in nature and often conflated the time to submit the data with the time to audit the data (Exs. 1113, 1092, 1192, 1421, 1366). A typical statement was, "OSHA estimates the electronic submission process would take each establishment only 10 minutes for each OSHA 301 submission and 10 minutes for the submission of both the OSHA 300 and 300A. This fails to accurately account for the time it would take employees to familiarize themselves with the process and review reports to ensure compliance with all regulations" (Ex. 1421).

Some comments directly addressed the issue of the relevance of the BLS estimates to OSHA's requirements (Exs. 1328, 1411). Eric Conn, representing the National Retail Federation (NRF), commented on the use of BLS's time estimate for submitting data, stating, "The data submitted for the BLS survey, however, is more limited in terms of information requested. BLS requests only certain data for up to 15 cases, but the Proposed Regulation would require all relevant Form 300 and/or 300A information from the entire injury and illness record. Thus the time burden would actually be much greater than OSHA predicts" (Ex. 1328).

OSHA agrees that the final rule requires information on all individual cases and not just on 15 or fewer lost workday injuries and illnesses, as required by BLS. The requirement for information on all cases from Form 301 was addressed in the PEA by estimating ten minutes per form entered and multiplying this by the number of forms OSHA would require to be submitted, rather than the number BLS requires to be submitted. Such differences are trivial, with the possible exception of the individual injury/illness entries on Form 300. In the FEA, OSHA has added two minutes per injury or illness listed on the OSHA 300 Log to account for this difference. Along with the 10 minutes per 300A Summary, OSHA is estimating more time than the BLS paperwork burden. For example, in the simplest case, OSHA estimates that an establishment with more than 250 employees and a single injury will take (on average) 10 minutes to electronically submit the OSHA Summary (Form 300A), 10 minutes to submit the single injury report (Form 301) and 2 minutes to submit the one line that would be on the 300 Log for each recorded injury, for a total of 22 minutes. BLS estimates 20 minutes as the average time across all employers for any number of injuries.

In the PEA, using the information on estimated hourly compensation of recordkeepers and estimated time required for data submission, OSHA calculated that the estimated cost per establishment with 250 or more workers for quarterly data submission of the information on Forms 300 and 300A would be $26.69 per year ([10 minutes per data submission] × [1 hour per 60 minutes] × [$40.04 per hour] × [4 data submissions per year]). Because the final rule now requires data to be submitted once a year, rather than four times a year, the equation in the FEA for submitting the Form 300A data is: $8.13 per year ([10 minutes per data submission] × [1 hour per 60 minutes] × [$48.78 per hour] × [1 data submission per year]). Note that $8.13 per year is nearly 75 percent less than the annual cost in the PEA because OSHA will not require quarterly submission. In addition, the estimated cost per recordable injury/illness case in the final rule is $9.74 ([10 minutes per case for form 301 entries plus 2 minutes per case for entry of form 300 log entries] × [1 hour per 60 minutes] × [$48.78 per hour]).

To calculate the total estimated costs of this part of the rule in the PEA, OSHA used establishment and employment counts from the U.S. Census County Business Patterns (CBP), data from the U.S. Census Enterprise Statistics (ES), and injury and illness counts from the BLS Survey of Occupational Injuries and Illnesses (SOII).[2] In the PEA, CBP data showed that there were 38,094 establishments with 250 or more employees in the industries covered by this section. The CBP data also indicated that these large establishments employed 35.8 percent of all employees in the covered industries. In the FEA, using newer CBP data, OSHA finds that there are 33,674 establishments with 250 or more employees, a decrease of 11 percent.

For the PEA, the BLS data showed a total of 2,486,500 injuries and illnesses that occurred in the covered industries. For the FEA, more recent BLS data were aggregated, and a total of 1,992,458 injuries and illnesses were found in the covered industries.

In both the PEA and the FEA, to calculate the number of injuries and illnesses that will be reported by covered establishments with 250 or more employees, OSHA assumed that total recordable cases in establishments with 250 or more employees would be proportional to their share of employment within the industry. Thus in the PEA, OSHA estimated that 890,288 injury and illness cases would be reported per year by establishments with 250 or more employees that were covered by this section. In the FEA, using the same methodology and more recent data, OSHA estimates that 713,397 injury and illness cases will be reported per year by establishments with 250 or more employees covered by this section.

In the PEA, OSHA calculated an estimated total cost of quarterly data submission of non-case information of $1,016,729 ([38,094 establishments required to submit data quarterly] × [$26.69 for electronic data submission per year]). In addition, OSHA calculated an estimated total cost of quarterly data submission of case information of $5,938,221 ([890,288 injury/illness cases per year at affected establishments] × [$6.67 per injury/illness case]). Summing these two costs yielded a total cost of $6,954,950 per year for the proposed rule ($1,016,729 + $5,938,221), for an average cost per affected establishment of $183 per year.

In the FEA, OSHA used the same equations above, using newer data plus an additional two minutes per injury and illness case to enter Form 300 data, to estimate the total cost of annual data submission under this section of the final rule. OSHA estimates a total cost of annual data submission of non-case information of $273,770 ([33,674 establishments required to submit data annually] × [$8.13 for electronic data submission per year]). In addition, OSHA calculates an estimated total cost of annual data submission of case information of $6,948,487 ([713,397 injury/illness cases per year at affected establishments] × [$9.74 per injury/

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[1] The ODI paperwork analysis (1218–0209) estimates an average time of 10 minutes per response for submitting Form 300A data. The ODI does not require submission of Form 301 data. The 10 minute estimate form the ODI is equal to the 10 minute estimate from the BLS SOII for submission of the same data.

[2] For the CBP see: *http://www.census.gov/econ/cbp/*. For the ES see: *http://www.census.gov/econ/esp/*. For the SOII see: *http://www.bls.gov/iif/oshsum.htm*.

illness case]). Summing these two costs yields a total cost of $7,222,257 per year for the final rule ($273,770 + $6,948,487), for an average cost per affected establishment of $214 per year.

OSHA requested comments on all aspects of the PEA, including examples of establishments with 250 or more employees that cannot report electronically with existing facilities and equipment or data sources showing that such establishments exist. Aimee Brooks commented on behalf of Western Agricultural Processors Association (WAPA): ". . . in some areas of California, tree nut hullers and processors do not have a computer or internet access" (Ex. 1273). Aimee Brooks also stated on behalf of California Cotton Ginners and Growers Association (CCGGA): "Cotton growers and ginners are usually remotely located and access to internet or a computer is not only limited, but both hardware and software are generally out of date, unreliable, and slow, meaning the online reporting process will take much longer than the OSHA estimate of 10 minutes per establishment" (Ex.1274).

As will be discussed below, many commenters were concerned that requiring electronic submission might be a problem for some small firms; however, no clear examples were provided of an establishment with over 250 employees that did not have computers and Internet access. Based on the comments to the proposed rule, and OSHA's own experience, the Agency continues to believe that large establishments with 250 or more employees have access to computers and the Internet.[3]

2. § 1904.41(a)(2)—Annual Electronic Submission of OSHA Annual Summary Form (Form 300A) by Establishments With 20 or More Employees but Fewer Than 250 Employees in Designated Industries

OSHA's methodology for estimating the costs of this section of the proposed rule in the PEA was similar to the methodology for estimating the costs of the previous section. OSHA first obtained the estimated cost of electronic data submission per establishment by multiplying the compensation per hour (in dollars) for the person expected to perform the task of electronic data submission by the time required for the electronic data submission. OSHA then multiplied this cost by the estimated number of establishments that would be required to submit data, to obtain the total estimated costs of this part of the proposed rule.

In the PEA, for compensation per hour, OSHA used the calculated cost of $40.04 per hour as a reasonable estimate of the hourly compensation of a representative recordkeeper. In the FEA, as discussed above, OSHA has increased this per-hour wage to $48.78.

In the PEA, OSHA used the BLS estimate of 10 minutes per establishment for electronic submission of the information on Forms 300 and 300A (Summary of Work-Related Injuries and Illnesses) to estimate the time required for this submission. The estimated cost per establishment for electronic submittal under this part of the proposed rule was $6.67 per year ([$40.04 per hour] × [10 minutes per data submission] × [1 hour per 60 minutes] × [one data submission per year]).

For the FEA, the estimated cost per establishment for electronic submittal under this part of the proposed rule is $8.13 per year ([$48.78 per hour] × [10 minutes per data submission] × [1 hour per 60 minutes] × [one data submission per year]).

In the PEA, OSHA estimated that the number of establishments subject to this part of the proposed rule would be 440,863. OSHA noted in the PEA that many of these establishments were already submitting these data to OSHA through the ODI. 47,700 establishments of the 68,600 establishments in the 2010 ODI (70 percent) submitted their data electronically.

As a result, OSHA estimated that the direct labor cost of this part of the proposed rule would have been $2,622,397 ([$6.67 per establishment per year] × ([440,863 establishments affected under the proposed rule] – [47,700 establishments already submitting electronically to the ODI])).

This estimate is based on the assumption that all of the affected establishments have on-site access to a computer and an adequate Internet connection. However, as noted above, 30 percent of establishments in the 2010 ODI did not submit data electronically. One possible reason for this choice is that, for some of those establishments, it was difficult to submit data electronically. Most agencies currently allow non-electronic filing of information, and some businesses continue to use this option, despite strong encouragement by agencies to file electronically.

OSHA searched for but was unable to find information on the proportion of all businesses without access to a computer and the Internet. However, OSHA did find a survey, conducted by a contractor for the Office of Advocacy of the Small Business Administration (SBA) in the spring of 2010, on the use of Internet connectivity by small businesses, called "The Impact of Broadband Speed and Price on Small Business" (*http://www.sba.gov/sites/default/files/rs373tot_0.pdf*). This survey suggests that at least 90 percent of small businesses surveyed use the Internet at their business. Further, the survey noted that 75 percent of all small businesses not using the Internet were small businesses with five or fewer employees. Given the survey's estimates that 50 percent of small businesses have fewer than 5 employees, this means that 95 percent of all small businesses with five or more employees have Internet connections. OSHA believes that even this 95 percent is an underestimate for two reasons. First, the survey is five years old, and during the past seven years the cost of both computer equipment and Internet access has fallen (for example, since May 2008 the BLS Personal Computer Index has fallen by nearly 20 percent; *http://data.bls.gov/timeseries/CUSR0000SEEE01?output_view=pct_3mths*). Second, the survey is of small entities, not establishments. OSHA can show that a significant proportion of small establishments are a part of non-small entities, and those larger entities are even more likely to have computers and Internet connections.

It also needs to be noted that the minimum establishment size affected by this proposed rule is 20 employees. It is reasonable to assume that an even smaller percentage of firms with 20 or more employees lack a computer with an Internet connection.

OSHA was able to find only two current Federal Government data collection programs that require data to be submitted electronically.

- Effective January 1, 2010, the Department of Labor's Employee Benefits Security Administration requires the electronic filing of all Form 5500 Annual Returns/Reports of Employee Benefit Plan and all Form 5500–SF Short Form Annual Returns/Reports of Small Employee Benefit Plan for 2009 and 2010 plan years, as well as any required schedules and attachments, using EFAST2-approved third-party software or iFile. EFAST2 is an all-electronic system designed by the Department of Labor, Internal Revenue Service, and Pension Benefit Guaranty Corporation to simplify and expedite the submission, receipt, and processing of the Form 5500 and Form 5500–SF.

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[3] Note that the establishments subject to the requirements in this section of the final rule include establishments that previously submitted data under the OSHA Data Initiative (ODI). However, OSHA has decided not to subtract the existing costs of submitting data for the ODI from the total costs estimated for this section of the final rule.

These forms must be electronically filed each year by employee benefit plans to satisfy annual reporting requirements under the Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code. Under EFAST2, filers choose between using EFAST2-approved vendor software or a free limited-function web application (IFILE) to prepare and submit the Form 5500 or Form 5500–SF. Completed forms are submitted via the Internet to EFAST2 for processing.

- Under the mandatory electronic filing provisions (11 CFR 104.18) of the Federal Election Commission (FEC), effective January 1, 2001, any political committee or other person that is required to file reports with the FEC and that receives contributions or makes expenditures in excess of $50,000 in the current calendar year, or has reason to expect to do so, must submit its reports electronically.

All other data collection programs identified by OSHA provide a non-electronic option for data submission, including the OSHA Data Initiative (ODI); various databases at the Environmental Protection Agency (EPA), including the Toxics Release Inventory Program (TRI); and programs administered by the Internal Revenue Service (IRS), the Bureau of Labor Statistics (BLS), and the U.S. Census Bureau (including business data).

As noted above, even a dated survey from 2010 found that 95 percent of small businesses with 5 or more employees had a computer with an Internet connection. The Department of Commerce estimated in 2009 that 69 percent and 64 percent of U.S. households, respectively, had some kind of Internet access and broad-band Internet access specifically (National Telecommunications and Information Administration, U.S. Department of Commerce, "Table 2 Households using the Internet in and outside the home, by selected characteristics: Total, Urban, Rural, Principal City, 2009 (Numbers in Thousands)", *http://www.ntia.doc.gov/legacy/data/CPS2009_Tables.html*). By 2013, high-speed broadband and Internet use had risen to 73 and 74 percent, respectively (Source: *http://www.census.gov/content/dam/Census/library/publications/2014/acs/acs-28.pdf*). In addition, households with higher incomes and levels of education were more likely to have Internet access at home, and home Internet access among employed householders was 78 percent, compared to 65 percent among unemployed householders and 52 percent among householders not in the labor force.

It seems reasonable to assume that business owners, as a group, have higher incomes and labor force participation rates than the U.S. population as a whole. And data from the 2007 Survey on Small Business Owners, conducted by the U.S. Census Bureau, show that business owners have higher levels of education; 74 percent of the business owners had at least some post-high school education and 45 percent had at least a bachelor's degree, compared to 55 percent and 30 percent among the general U.S. population aged 25 and older in 2010 (U.S. Census, "Table 1. Educational Attainment of the Population 18 Years and Over, by Age, Sex, Race, and Hispanic Origin: 2010", *http://www.census.gov/hhes/socdemo/education/data/cps/2010/Table1-01.xls*, accessed June 15, 2011). Further, a small-business owner without an office or home computer may own a smart phone, which could easily be used for transmitting the data for the 300A summary because it is a very simple form.

In the PEA, to account for the lack of direct data on computers and Internet access among small businesses and the presumed increase in Internet usage since the indirect data were obtained, OSHA estimated that 95 percent of the 440,863 establishments subject to this part of the proposed rule (*i.e.,* 418,820 establishments) had access to a computer with an Internet connection, either at home or at work. OSHA believed that the actual percentage of establishments with Internet access was larger than this estimated value. OSHA welcomed comment on this issue. The remaining 22,043 establishments would have to either buy additional equipment and/or services or use off-site facilities, such as public libraries. OSHA estimated in the PEA that finding and using such off-site facilities would add an hour (including transportation and waiting time), on average, to the time required by the recordkeeper to submit the data electronically. For some establishments, they might need to travel next door to find a computer or Internet access, while others might need to drive for an hour or more. In the proposal this led to additional costs of $882,607 per year ([440,863 establishments] × [5% of these establishments] × [1 hour for finding and using off-site facilities] × [$40.04 per hour]).

OSHA requested comments on all aspects of this preliminary estimate and received many comments. Some commenters requested that OSHA still provide a paper reporting option (Exs. 0179, 0211, 0253, 0255, 1092, 1112, 1123, 1190, 1192, 1199, 1205, 1322). The American Forest and Paper Association (AFPA) commented, "Many businesses, particularly small firms located in rural areas, do not have ready access to the Internet or may find electronic reporting burdensome because they currently have a paper-based record system and should not be burdened with the cost of converting to an electronic format" (Ex. 0179). Many commenters incorrectly asserted that OSHA had assumed everyone had a computer and kept records electronically (Exs. 1092, 1123, 1190, 1199, 1200, 1343, 1359, 1370, 1410, 1421). As discussed above, this assumption was inaccurate. Perhaps because of this inaccurate assumption, almost no commenters addressed OSHA's estimate of the number of establishments without computer access or OSHA's estimates of the costs for such establishments.

However, one commenter, the American Farm Bureau Federation (AFBF), provided information on computer use on farms: ". . . only 68 percent of farmers (both livestock/poultry and crop producers) have a computer and only 67 percent have internet access . . ." (Ex. 1113). Note that the figure of 67 percent of farms with Internet access is only a bit below the national average for households of 74 percent with Internet access. OSHA does not expect that many farms will be subject to reporting under this final rule, because few farms have 20 or more workers. Of the 2.2 million US farms, only about 550,000 have any hired help (about 25 percent). The 2012 Agricultural Census reports that there are just 40,661 farms with 10 or more workers in the U.S. OSHA believes that there are 20,623 farms with more than 20 hired workers that would be subject to this final rule. OSHA believes that farms with many workers are extremely large operations, heavily capitalized, and likely to have computers or smartphones and Internet access.

In the PEA, OSHA estimated the total costs of this part of the proposed rule as the direct labor cost of electronic submittal ($2,622,397) for the 393,163 establishments subject to the rule and not already electronically submitting the data to OSHA through the ODI, plus the additional cost for 5 percent of the affected 440,863 establishments of going off-site to submit the data electronically ($882,607). A last cost of $189,935 in the PEA, for those establishments that do not currently certify their records, is discussed below. Thus, the total cost of the proposed rule was $3,695,939 per year, or an approximate estimated average of $9.40 per affected establishment ([$3,695,939 per year]/

([440,863 establishments affected under the proposed rule] − [47,700 establishments already submitting electronically to the ODI])).

In the FEA, the estimate of affected establishments is smaller: 410,673 affected establishments versus 440,863 affected establishments with 20 or more employees in the PEA, or 6.8 percent less. Note that, since the ODI was not in effect in 2015, OSHA will not take an offset for establishments submitting data for the ODI.

The total costs of this part of the final rule are the direct labor cost of electronic submittal ($3,338,771) for the 410,673 non-farm establishments subject to the rule, plus the additional cost for 5 percent of the affected 410,673 establishments of going off-site to submit the data electronically ($1,001,631). A last cost of $231,192, for those establishments that do not currently certify their records, is discussed below. Thus, the total cost is $4,571,594 per year, or an approximate estimated average of $11.13 per affected establishment ([$4,571,594 per year]/([410,673 establishments affected under the proposed rule]).

In the PEA, OSHA recognized that a small percentage of establishments currently subject to part 1904 do not fully comply with the requirement in § 1904.32(a)(3) to certify the accuracy of each year's records. OSHA inspection data showed that in 2010, about 1.6 percent of establishments undergoing an inspection had a violation of the recordkeeping certification requirement. OSHA had previously estimated costs and a paperwork burden for the time these employers would spend reviewing their data for certification purposes (*see, for example,* OSHA's September 2014 recordkeeping paperwork package). Because the data collection under this section of the proposed rule would have made it obvious to these employers that the records had not been certified, OSHA included the full costs of certification for those not in compliance with § 1904.32(a)(3) as a cost of this rule. In the PEA, the number of not-in-compliance establishments was estimated by multiplying 1.6 percent times 360,863 establishments subject to the rule but not currently in the ODI (440,863 total establishments minus 80,000 in ODI). The resulting figure was only 5,774 establishments not in compliance with § 1904.32(a)(3). The cost for these non-compliers to comply with § 1904.32(a)(3) by completing certification was $189,935. This was calculated by multiplying [(30 minutes) × (5,774 establishments) × ($65.79 per hour) × (1 hour per 60 minutes)], where $65.79 was the adjusted hourly wage for a certifying official. This wage reflected the hourly wage plus benefits of an Industrial Production Manager (OES 11–3051), the same occupation used for certification of records in other OSHA recordkeeping regulations. OSHA invited comments on whether 1.6 percent is the actual certification non-compliance rate for firms subject to part 1904, and on whether the adjusted wage of $65.79 was, on average, the correct wage rate for individuals certifying annual recordkeeping logs. OSHA did not receive any comments disputing these figures. As a result, OSHA has retained the estimate of 1.6 percent of establishments not certifying their annual records.

In the FEA, OSHA updated the wage rate of the certifying official, using 2014 data. Thus the wage rate for the certifying official, based on the wage of an Industrial Production Manager (OES 11–3051), is $70.37, based on a mean hourly wage of $48.87 and a fringe benefit factor of 1.44 ($48.87 × 1.44 = $70.37). The estimated number of non-compliant establishments is 6,571 (1.6 percent of 410,673 non-farm establishments). The cost of certification for non-certifying establishments is $231,200 [(30 minutes) × (6,571 establishments) × ($70.37 per hour) × (1 hour per 60 minutes)].

OSHA believes, and current ICRs support, that 30 minutes is the appropriate amount of time required, on average, for certification. However, a range of time requirements is possible. For example, if the certifying officials are especially productive at certification, perhaps because the injury and illness records are well-maintained or because the officials are able to work off existing finalized summary reports sent to Workers' Compensation insurance agencies, then it may only take 15 minutes, on average, to complete the certification. In that case, the total cost would be just $115,596. On the other hand, perhaps the certifying officials have become less productive since the previous ICRs. If it now takes a certifying official one hour instead of 30 minutes to certify, then the total cost for non-complying establishments would be $462,384.

OSHA also notes that in the PEA, farms with 20 or more employees were not counted for cost purposes, though they were included in the scope of the regulation. A separate analysis follows for the FEA.

OSHA was not able to obtain a count of farms (crop and animal) with 20 or more employees. OSHA took the estimate of farms with 10 or more employees (41,246 farms), provided by the Census of Agriculture, and took 50 percent of that total (20,623 farms) as the best estimate of the number of farms with 20 or more employees. This is still possibly an over-estimate of the number of farms with 20 or more employees, because the inverse relationship between the number of farms and the number of farm employees rises geometrically. Other information, for example farm revenue data, also help to show that there are very few farms with revenues high enough to support 20 employees.

Following the methodology used elsewhere in the FEA, those 20,623 farms will on average take 10 minutes to submit their summary electronically to OSHA. OSHA has made two adjustments to this methodology for farms. First, OSHA estimates that five percent of farms subject to this section of the final rule (1,031 farms) will not have access to a computer, a smart phone, or the Internet. Second, OSHA estimates a travel time of one hour for data submitters at these establishments to travel off-site to an Internet connection.

OSHA estimates that 330 farms (1.6% × 20,623 farms) do not currently certify their injury/illness records, leading to an additional cost of $11,611 [(30 minutes) × (330 establishments) × ($70.37 per hour) × (1 hour per 60 minutes)]. The total cost for farms included in electronic reporting is $229,568, which is derived by multiplying [(20,623 farms) × ($48.78 per hour) × (10 minutes) × (1 hour per 60 minutes)] and adding [(1,031 farms without Internet) × ($48.78 per hour) × (1 hour)] and then adding [(330 farms that do not currently certify) × ($70.37 per hour) × (30 minutes) × (1 hour per 60 minutes)].

OSHA believes that the same computer ownership factor used in the PEA and FEA for general establishments also applies to farms. While there were comments, based on a USDA survey, that farms did not have as many computers or as much Internet access as the rest of the private sector, that survey was heavily weighted toward typical American farms, *i.e.,* farms operated by a single farmer or farm family, and many times smaller than an operation with 20 or more employees. OSHA again emphasizes that a smart phone with data access will be sufficient to submit summary data from the Form 300A to the OSHA Web site.

Several commenters expressed concern that OSHA was not allowing enough time for initial startup or familiarization for establishments that will be newly required to report their data electronically (Exs.1338, 1276, 1351, 0160, 1112, 1205, 1394, 1190, 1342, 1281, 1397, 1343, 1402, 1199, 1113, 1092, 1192, 1421, 1372, 1401, 1356, 1332, 1198, 1279, 1366). In response to these comments, OSHA has added ten minutes to the time estimate, in the first year the regulation is in effect, to account for the time establishments take to create their login accounts with OSHA and enter their basic information from the OSHA 300A form, such as establishment name and address. These ten minutes are not included in current paperwork packages, so the costs will apply to every establishment subject to reporting electronically to OSHA—a total of 431,296 establishments (including the 20,623 farms). Note that number of establishments includes both establishments with 20 to 249 employees, subject to the requirements in this section of the final rule, as well as establishments with 250 or more employees, subject to the requirements in the previous section of the final rule. The total first-year cost for familiarization is $3,506,436 [(431,296 establishments) × ($48.78 per hour) × (10 minutes) × (1 hour per 60 minutes). This one-time, first year cost can be amortized over 10 years at a 7 percent interest rate to yield $499,237 per year. At a 3 percent interest rate, it would yield $411,061 per year.

3. §§ 1904.35 and 1904.36

The last cost element is from the non-discrimination provisions of this final rule. In the economic analysis for the supplemental notice to the proposed rule, OSHA stated that "these provisions do not require employers to provide any new or additional records not already required in existing standards. (When the existing standards were promulgated, OSHA estimated the costs to employers of the records that would be required.) These provisions add no new rights to employees, but are instead designed to assure that employers recognize the existing right of employees to report work-related injuries and illnesses."

After examining the rulemaking record and adjusting the final regulatory text, OSHA now anticipates that the implementation of the non-discrimination provisions will have one cost component, namely an informational component that employers can meet by posting the new OSHA poster (*https://www.osha.gov/Publications/osha3165-8514.pdf*). The final rule requires employers to specifically inform employees that they have the right to report injuries and illness, and that employers are not to discourage or retaliate against an employee who reports an injury or illness. Posting this new poster will allow employers to meet this requirement, because it informs workers that they have the right to report injuries or illness, without being retaliated against, and informs employers that it is illegal to retaliate against an employee for reporting an injury or illness. (Note that the old poster mentioned that employees had the right to make safety/health complaints without retaliation in general, but made no specific reference to the reporting of injuries and illnesses.) Note also that this is not the only way an employer can meet this requirement; an employer may inform the employees in any way that the employer sees fit. However, OSHA believes that the use of a professionally-designed poster that is easily downloadable from many Web sites, including OSHA's, is the most inexpensive way for most employers to meet this requirement.

This section of the FEA accounts for the costs, discusses the benefits, and in addition addresses comments provided by the public on the subject of this part of the final rule.

For the costs—although employers are required to post the OSHA poster, OSHA is not requiring employers to replace the existing poster with the new poster. Putting up the OSHA poster is therefore a new cost for this final rule. To calculate the cost of posting the new OSHA poster, OSHA used the following judgments. First, it will take an employer five minutes to obtain and post the poster. Second, this task will be undertaken by an industrial manager with an hourly wage of $70.37, as above. Third, there are 1,364,503 establishments subject to this requirement in the final rule (including farms with 10 or more employees). The estimated one-time cost for posting the new OSHA poster is thus $8,001,673 [(1,364,503 establishments) × $70.37 per hour) × (5 minutes) × (1 hour per 60 minutes)]. Annualized over 10 years at 3 percent interest, this is a total cost of $938,040 per year. OSHA believes this cost estimate is a significant over-estimate because many establishments routinely download and post newer versions of OSHA's poster even without regulatory guidance. In addition, although OSHA is using an estimate of five minutes in the FEA, OSHA wrote in the supplemental notice to the proposed rule that posting the sign could take as few as three minutes.

OSHA received a few comments relating to the costs of the non-discrimination provisions of the proposed rule. Some commenters noted that OSHA already requires employers to post an OSHA sign that informs workers of their right to not be discriminated against for reporting (Exs. 1547, 1600, 1603). For example, the Association Connecting Electronics Industries commented, "Employees must already be made aware that they are protected under the Act 'against discharge or discrimination for the exercise of their rights under Federal and State law.' Specifically, OSHA requires that employers post OSHA 3165, Job Safety and Health—It's the law! This posting clearly states that employees can file a complaint with OSHA within 30 days of retaliation or discrimination by an employer for making a safety or health complaint and employers must comply with the occupational safety and health standards under the OSH Act" (Ex. 1668). OSHA agrees that workplaces must post an OSHA poster, but there is no requirement that establishments download the latest OSHA poster, which is the one that contains the specific information on the right to report injuries and illnesses, as required by the final rule.

OSHA did not quantify the benefits of the non-discrimination requirement in the supplemental notice to the proposed rule, because OSHA believed that since there would be no additional costs, there would be no additional benefits. In the supplemental notice to the proposed rule, OSHA stated, "OSHA also expects that, because these three potential provisions will only clarify existing requirements, there are also no new economic benefits. The provisions will at most serve to counter the additional motivations for employers to discriminate against employees attempting to report injuries and illnesses." [79 FR 47605–47610]

However, OSHA believes that posting the newest OSHA poster will encourage both employees and employers to accurately report and record workplace injuries and illnesses. Many commenters commented that informing workers of their right to report injuries and illnesses without fear of discrimination was beneficial (Exs. 1489, 1529, 1603, 1640, 1647, 1679, 1682, 1688, 1695, 1696). The Communications Workers of America (CWA) stated, "Employer notification to employees of their right to report occupational injuries and illnesses without fear of employer retaliation, employer development and implementation of reasonable injury and illness requirements, and the prohibition of employer's adverse action against the workers who report injuries and illnesses is extremely important towards improving and maintaining safe and healthful working conditions and worker well-being" (Ex. 1489).

4. § 1904.41(a)(3)—Electronic Submission of Part 1904 Records Upon Notification

This part of the final rule has no immediate costs or economic impacts. Under this part of the rule, an establishment will be required to submit data electronically if OSHA notifies the establishment to do so as part of a specified data collection. Each specified data collection would be associated with its own particular costs, benefits, and economic impacts, which OSHA would estimate as part of obtaining OMB approval for the specified data collection under the Paperwork Reduction Act of 1995.

5. Budget Costs to the Government for the Creation of the Reporting System, Helpdesk Assistance, and Administration of the Electronic Submission Program

While OSHA has not typically included the cost of administering a new regulation in the preliminary economic analysis, the Agency did include such costs in the PEA, because they represented a significant fraction of the total costs of the regulation. The program lifecycle costs can be categorized into IT hardware and software costs, helpdesk costs, and OSHA program management personnel costs. OSHA received estimates for the lifecycle costs from three sources: an OSHA contractor, the BLS, and the OSHA web-services office.

According to OSHA's Office of Web Services, the creation of the reporting system hardware and software infrastructure would have had an initial cost of $1,545,162. Annualized over 10 years at 3 percent interest, this is $181,140 per year.

BLS provided a unit cost estimate of 28 cents per transaction. This would have amounted to $372,000 per year for about 1.3 million transactions. Adding annual help desk costs of $200,000 would have made the total $572,000.

The contractor and OSHA's Office of Web Services provided higher budget estimates. The contractor suggested that annual costs could have been as high as $953,000, while the OSHA Office of Web Services suggested a cost of $626,000 per year.

Under the proposed rule, OSHA would have also continued to require three full-time-equivalent workers (FTEs) to administer the new electronic recordkeeping system. OSHA believed these FTEs would have cost the government $150,000 each, including salary and benefits, for a total of $450,000 per year. Added to the BLS cost of $572,000 and the annualized start-up cost of $220,000, this would have amounted to $1,242,000, or just over $1.2 million. Adding the FTE costs to the contractor and OSHA Office of Web Services estimates, along with the annualized start-up cost, would have yielded a range of between $1.2 million and $1.6 million per year. For its best estimate in the PEA, OSHA used the BLS estimated costs per transaction, because this estimate is based on actual experience with implementing a similar program.

For the FEA, OSHA used the estimate for costs to the government as published in the PEA and then adjusted the estimate by using the rate of inflation determined by the GDP deflator (source: St. Louis Federal Reserve Bank GDP deflator time series from January 2012 to January 2015: 3.0 percent) to adjust the estimated cost to the government. Thus the cost to the government for this final rule is $1,279,260.

Several commenters commented on the cost to the government. Several commenters expressed concerns that this data collection effort would strain the resources of OSHA by costing too much or requiring too many Federal employees to work on this project (Exs. 1187, 1193, 1199, 1204, 1219, 1336, 1339, 1382, 1389, 1399, 1430, 1461). A typical comment highlighting the possible additional costs to the government was submitted by the MYR Group: "Although not technically required for notice and comment rulemaking under the OSH Act, MYR Group believes that OSHA should evaluate the cost of its own resources which would be required to be dedicated to this rule instead of other compliance assistance or enforcement activities. OSHA would have to establish and continuously maintain a special government Web site for these data collections. This involves not only hardware and software expenses, but also ongoing salaries. To utilize the data for injury and illness prevention, or for enforcement, OSHA would have to establish positions for analysis to review and interpret the data. MYR Group believes that shifting resources from prevention activities to data management would be detrimental to making the workplaces safer and certainly not worth the minor potential for an incremental benefit in the collection of statistically insignificant data" (Ex. 1399).

In response, OSHA believes that the number of OSHA employees who will be assigned to collecting and analyzing the improved data will be the same number as those who worked on the ODI program. Based on examples of Web sites submitted by OSHA's contractor, OSHA believes that the data collection Web site will be a turn-key operation that will not require much human monitoring, just like the ODI data collection Web site. Further, OSHA believes that this data collection, even if it requires additional resources, will result in saving of other resources through better targeting of resources and better understanding of safety and health.

6. Discussion of Other Potential Costs of the Rule

Some commenters suggested that there were other possible costs associated with the rule, including costs for computers and computer systems, for training, and for review of submissions. Others commented that there might be indirect costs, for example through loss of reputation to a firm (or, presumably, an establishment), loss of confidential business data, higher OSHA fines, additional union organizing, additional training, and opportunity costs, as well as perhaps higher labor costs as the labor supply gets better information on the safety and health of a workplace. Commenters also suggested that liability costs might rise, or that the security of dangerous materials or processes might be compromised. Finally, commenters suggested that an untrained public might naively misinterpret the data. Each of these groups of comments will be addressed briefly in this section.

a. Computers and Computer Systems

Some commenters argued that OSHA was requiring the use of computerized record keeping. Troy Miller, a private citizen, commented, "The literature included with the proposed rule suggests that OSHA assumes a majority of employers already keep their injury and illness records electronically, so submission to OSHA should be doable without much extra time or expense" (Ex. 0160). A related set of comments suggested that many establishments or firms would need to buy new computer systems (Exs. 0035, 1205, 1225, 0179, 0210, 1092, 1123, 1189, 1190, 1192, 1199, 1275, 1281, 1092, 1113, 1279).

OSHA notes that nothing in this final rule, or in the existing part 1904 regulation, requires employers to create or maintain records electronically. Anyone who prefers to keep paper records for whatever reason may continue to do so. Employers who keep paper records will only have to enter the information from their paper records onto the forms on OSHA's Web site. OSHA estimates that this data entry will require 10 minutes per form and two minutes per line entry on Form 300. It is possible that an employer who already keeps records electronically could take fewer than ten minutes per form and two minutes per line entry on Form 300 by electronically transferring the appropriate data to the OSHA Web site.

b. Training

Several commenters suggested that they would face additional training costs to train employees who already administer or keep OSHA 300-series forms to upload either summary or Log data to the OSHA Web site (Exs. 0160, 0179, 0194, 0196, 0210, 0215, 1091, 1092, 1326, 1339, 1340, 1372, 1393, 1394, 1396, 1401, 1408). A typical comment on training was submitted by the Pacific Maritime Association (PMA), which commented, "OSHA has failed to take into account the costs associated with having to train employees to record injuries in a manner suitable for publication . . ." (Ex. 1326).

OSHA continues to believe that additional training should not be necessary either to fill in a web form or to transmit records from an existing electronic system with which the employee is already familiar. This will be no more difficult than filling in order forms on private sites or other government forms online. It should be noted that more than 70 percent of respondents to the OSHA ODI and the BLS SOII collections choose to respond electronically. OSHA has already accounted for training for recordkeepers to understand the OSHA recordkeeping system and for the costs of familiarizing first-time recordkeepers with the Web site. No additional training will be necessary to transfer data from already-filled-in forms to a computer form. Note that OSHA's estimate of an hourly wage of $48.78 for the person entering the data assumes that the person is a technically-proficient employee; the hourly wage for an employee who is not technically proficient would typically be less.

c. Review

Several commenters suggested that some establishments might undertake an extra level of review, or an extra review effort, before sending the information to OSHA (Exs. 0258, 1110, 1123, 1205, 1336, 1356, 1399, 1401, 1413, 1427). For example, the Phylmar Regulatory Roundtable (PRR) commented, "Online submission to OSHA will likely include the labor not just of record keepers, but of more senior health and safety staff to quality control the data before submission. Most members believe strongly that senior management would seek to review and approve all submissions (not just the 300A reports); again this would involve additional cost to comply" (Ex. 1110).

As discussed above, comments on this issue were often conflated with other issues, for example the confidentiality of employees' records. The Texas Cotton Ginners' Association (TCGA), represents very small establishments that "will have up to 20 or 30 employees during peak periods" (Ex. 0211). The TCGA suggested that, because of the possibility of revealing confidential employee information, a manager might instead subject the data to further review and upload it themselves: "The concern of management will be that this type of system will inherently set up situations where workers may feel their privacy is violated, and the worker is likely to blame their employer when this occurs. To minimize their liability, it is unlikely that a company will simply hand all the forms to a clerk and tell them to key the data into the public domain" (Ex. 0211).

In response, OSHA notes that OSHA's estimate of an hourly wage for the recordkeeper submitting the data is based on the assumption of a safety and health specialist familiar with the establishment's safety and health records, and that this hourly wage may be larger than the hourly wage for managers of small firms. Second, OSHA notes that a firm with 20–30 employees is required to submit only the information from Form 300A (the annual summary), which contains no employee-specific information.

OSHA believes that existing regulations already provide an entirely adequate incentive to employers to thoroughly review their records and that publication of establishment-specific data through the final rule will require little further review. After all, OSHA records can already be accessed by OSHA at the time of inspection, as well as by employees and their representatives (including unions and employee attorneys). In addition, employers are already required to certify records under possible penalties of perjury.

Some commenters were concerned about confidential business information or personal information (Exs. 0038, 0150, 0159, 0210, 0215, 0252, 1090, 1091, 1110). As discussed above, there is no need for confidential business information in OSHA records, and OSHA already urges employers to avoid including confidential business information in OSHA records because OSHA allows employees and their representatives access to these records and places no limitations on the use of these records. There is no need for such confidential business information in OSHA records, and confidential business information should already be excluded, as the records can be made public at any time. Employers concerned with the time required to expunge personal information should also consider that the information in question could already be made public and that recordkeeping should exclude as much personal information as possible, consistent with the use of the records. In addition, OSHA intends to exclude the names and other PII of individuals from the records before publishing the data.

d. Harm to Reputation

Some commenters suggested that published injury and illness data will tarnish the reputations of some establishments, or enterprises, or perhaps their entire industry. The Pacific Maritime Association commented, ". . . an employee who has worked for one employer over a long period of time, and complains about a cumulative injury on his first day of work with a second employer will trigger an injury report that will be attributed to that second employer. Publication of this report is obviously unfair and inaccurate. Further, owing to contractual obligations and developing regional working rules, the standards and conditions at different ports change with a degree of frequency. Accordingly, without the proper context—something that OSHA has not proposed to provide as part of this database—it will be impossible for the public to even compare the injury rates of a single port" (Ex. 1326). OSHA agrees that it is important for users of the data to understand the rules under which the data was gathered, as shown by the "Explanatory Notes" OSHA includes with its currently-published ODI data. OSHA intends to include similar notes and explanations with the data collected under this rulemaking to minimize misunderstanding and misrepresentation of the data.

Many commenters wrote that they feared that publication of establishment-specific summaries of annual injuries and illnesses would harm the establishments' reputations, and therefore, their businesses (Exs. 0157, 0160, 0162, 0181, 0189, 0205, 0218, 0224, 0235, 0240, 0242, 0245, 0249, 0251, 0255, 1084, 1089, 1090, 1091, 1092, 1093, 1095, 1096, 1106, 1112, 1113, 1115, 1117, 1123, 1192, 1197, 1198, 1199, 1200, 1205, 1209, 1214, 1216, 1217, 1218, 1224, 1225, 1272, 1276, 1277, 1279, 1281, 1282, 1283, 1284, 1321, 1326, 1327, 1328, 1332, 1333, 1336, 1337, 1341, 1342, 1343, 1348, 1349, 1351, 1355, 1356, 1357, 1359, 1361, 1370, 1380, 1388, 1389, 1393, 1396, 1397, 1399, 1400, 1401, 1402, 1405, 1408, 1412, 1421). A typical comment was submitted by Grede Holdings, LLC (GH), which stated that "[p]roviding raw data in a public forum to be viewed by individuals or groups that may not know how to interpret the data could result in incorrect conclusions or assumptions about the employer. This misunderstanding of the data could further result in unwarranted damage to a company's reputation, related loss of business and jobs, and unwarranted government inspections consuming the limited agency and company resources that could be used more effectively elsewhere" (Ex. 1402). The National Association of Home Builders (NAHB) commented that "OSHA also does not consider the adverse impacts on safety and health that could occur through the implementation of this rule. These impacts have been discussed above and include employers shifting resources away from safety and health initiatives toward lagging indicators, employers including fewer details of injuries and illnesses on recordkeeping forms, and employers with sound injury and illness prevention programs being subjected to reputation damage from employers, employees, and others making incorrect assessments of their safety and health efforts from extremely limited facts" (Ex. 1408).

Regarding the first comment, OSHA is not aware of damage to the reputations of establishments or firms from other, similar data collection efforts. For example, MSHA has been collecting and publishing individual mine injury data on the Web for 15 years. OSHA itself has, for many years, published establishment-specific results of its inspections and, more recently, establishment-specific data collected through the ODI. There are other types of web-published data, which include public safety information (for example police or fire responses to a business's location), health inspector reports, court records, and information about a firm's financial condition. All of these sorts of information are subject to misinterpretation by members of the public.

Regarding the second comment, OSHA strongly disagrees with the commenter that a strong illness and injury prevention program can be based on hiding basic information on injury and illness rates from either employees or the public. Illness and injury prevention programs work best when data on injuries and illnesses is collected and analyzed frequently and used as a tool to improve safety and health. As discussed above, this data collection effort will allow scholars and public health experts to analyze establishment data, discover patterns in injuries and illnesses, and recommend solutions.

e. Opportunity Costs of the Regulation

Another comment about the proposed rule had to do with what one commenter explicitly identified as "opportunity costs", that is, the value of effort forgone due to the compliance costs for this final rule. The Food Marketing Institute (FMI) commented, "Thus, time spent addressing the proposed rule's many requirements is time that the safety personnel cannot spend providing safety training, completing safety audits, or handling other matters critical to the ongoing safety of the workplace. The opportunity costs created by the proposed rule are potentially significant and must be accounted for in the proposal's overall cost to employers" (Ex. 1198).

In response, the comment above is true for any government rule or regulation, or for that matter, any internal firm regulation or operating procedure. Time spent on compliance with any regulation is, by definition, time that cannot be spent on something else. That is one reason why OSHA has kept the requirements for this final rule as simple and as economical as possible. OSHA does not believe that an extra ten minutes, or even an extra hour, every year will significantly affect the ability of an establishment to have a safety program or generate profits. In fact, OSHA believes that when an establishment has access to the injury and illness information for other firms that will be generated by this final rule, it should make an establishment's safety and health program more efficient. Further, in principal, the labor costs of affected workers reflect the opportunity costs of that labor. If the opportunity cost is significantly higher than the labor costs, the firm should consider hiring more of the kind of labor in question.

f. Data Taken Out of Context

Last, many commenters stated that OSHA injury and illness data might be taken out of context or misinterpreted by the public. One commenter, the National Grain and Feed Association (NGFA), commented, "Providing raw data to those who do not know how to interpret it or without putting such data in context invites improper and false conclusions or assumptions to be drawn about the employer, which could lead to unnecessary damage to a company's reputation, related loss of business and jobs, and misallocation of resources by the public, government and industry" (Ex. 1351). OSHA strongly disagrees with comments criticizing the value of raw and un-interpreted injury and illness data. Standard economic principles show that information is valuable, even if it is difficult to interpret. As economists as early as Adam Smith, and including Friedrich Hayek and Milton Friedman, have shown, economic actors who have only a narrow view of the information available in the economy work together to efficiently allocate resources. Hayek wrote in "The Use of Knowledge in Society" (1945) that "The whole acts as one market, not because any of its members survey the whole field, but because their limited individual fields of vision sufficiently overlap so that through many intermediaries the relevant information is communicated to all. The mere fact that there is one price for any commodity—or rather that local prices are connected in a manner determined by the cost of transport, etc.—brings about the solution which (it is just conceptually possible) might have been arrived at by one single mind possessing all the information which is in fact dispersed among all the people involved in the process."

In addition, OSHA believes that the best solution to the "problem of information" is more information. Establishments, corporations, and industry groups will now have access to competitors' information on injuries and illnesses, and they will be able to distinguish themselves from others in their industry.

7. Total Costs of the Rule

As shown in the Table VI–1 below, the total costs of the final rule would be an estimated $15.0 million per year. These costs are shown in the middle column of Table VI–1. Also note that the last column, "First Year Costs", is broken out separately, but is also included in the Final Rule Annual Costs column, having been amortized over 10 years at 3 percent interest. It would be double-counting to add the total of the second and third columns together.

TABLE VI–1—TOTAL COSTS OF THE FINAL AND PROPOSED RULE

Cost element	Proposed rule	Final rule	Final rule
	Annual costs	Annualized costs	First year costs (if different from annualized costs)
Electronic submission of part 1904 records by establishments with 250 or more employees	$6,954,950	[4] $7,222,257	
Electronic submission of OSHA annual summary form (Form 300A) by establishments with 20 to 249 employees in designated industries	3,695,939	4,571,594	
This includes:			
Cost for establishments without a computer ($1,001,631).			
Cost for establishments with non-certified records ($231,192).			
Cost for Agricultural Establishments not in PEA		229,568	
Familiarization		411,061	3,506,436
Cost for check by unregulated establishments		370,283	3,158,593
Cost of non-discrimination provision		938,040	8,001,673
Electronic submission of part 1904 records upon notification	*0	*0	
Total Private Sector Costs	10,650,889	13,742,804	
Total Government Costs	1,242,000	1,279,260	1,545,162
Total	11,892,889	15,022,064	

* This part of the proposed rule has no immediate costs or economic impacts. Under this part of the rule, an establishment would be required to submit data electronically if OSHA notified the establishment to do so as part of a specified data collection. Each specified data collection would be associated with its own particular costs, benefits, and economic impacts, which OSHA would estimate as part of obtaining OMB approval for the specified data collection under the Paperwork Reduction Act of 1995.

First, as noted elsewhere in this document, the final rule does not add to or change any employer's obligation to complete, retain, and certify injury and illness records. The final rule also does not add to or change the recording criteria or definitions for these records. The only change is that, under certain circumstances, employers will be obligated to submit information from these records to OSHA in an electronic format. Many employers have already done this through the OSHA Data Initiative and BLS SOII survey; these employers have not commented, either on the proposed rule or on the paperwork analyses, that they incurred additional costs beyond those that OSHA estimated (*see* for example the ODI ICR 200912–1218–012 and the SOII ICR 201209–1220–001).

Second, employers are already required to examine and certify the information they collect. Employers who are already sufficiently satisfied with the accuracy of their records to accept the risk of a criminal penalty are unlikely to do more simply because they must electronically submit the records to OSHA. Therefore, the prospect of submitting their data to OSHA would not provide any additional incentive to carefully record injuries and illnesses.

Third, injury and illness records kept under part 1904 are already available to OSHA and the public in a variety of ways. The annual summary data must be posted where employees can see it. Employees or their representatives can also obtain and make public most of the information from these records at any time, if they wish. These are the people who are most likely to recognize if the records are inaccurate. Finally, OSHA Compliance Officers routinely review these records when they perform workplace inspections. While OSHA inspections are a rare event for the typical business, they are much more common for firms with over twenty employees in the kinds of higher-hazard industries subject to this rule.

OSHA requested comments on the issue of whether employers newly required to submit records to OSHA may spend additional time assuring the accuracy of their records, beyond what they spend now. If all 431,296 establishments were to spend an extra half hour for an industrial health and safety specialist to double-check the data prior to submission, then the costs of this final rule would increase by $10.5 million. While this would be a substantial addition to the costs of the rule, such an addition would not alter OSHA's conclusion that this is neither an economically-significant rule nor a rule that would impose significant costs on a substantial number of small businesses.

OSHA received two comments that provided alternative estimates of the total costs. OSHA will review these estimates here.

Miles Free at Precision Machined Products Association (PMPA) provided a detailed breakdown of estimated costs, itemizing the tasks firms would have to undertake due to the proposed regulation change (Ex. 194). The costs totaled $592 per firm. Most of these tasks were not included in OSHA's cost estimate. The total of $592 includes the use of a higher managerial wage ($30) and costs associated with reading the rule, reviewing, training, and development of IT resources; he notes "many of these costs are initial setup". OSHA believes that many of these costs seem inflated. For example, the second largest single cost element is for "reading the rule" which will require 4 hours. Given that the rule itself takes up less than one page of text, and can be readily explained in less than another page of text, it is difficult to imagine how someone could spend 4 hours reading the rule. In addition, as noted above, review of records is already required; no additional IT resources are required to submit a form electronically; and it is difficult to see how technically-qualified personnel will need training in order to submit already-gathered data on an Internet form.

For the Final Economic Analysis, OSHA added 5 minutes of time for establishments that are required to keep records, but are not newly required to submit annual records summaries to OSHA under this rule. OSHA believes those establishments might need 5 minutes to check OSHA's Web site, or various other Web sites or sources of information to determine if they are covered under this recordkeeping change. There are 889,327 establishments that are required to keep records but are not required to report under this new rule. If each establishment takes 5 minutes to check, using an Industrial Health and Safety Specialist with a loaded wage of $42.62, then the unit cost will be $3.55 [5/60 * $42.62] and the total cost, which occurs entirely in the first year and can be annualized over 10 years at 3 percent interest, is $370,283 [$3,158,593 in the first year, discounted at a 3 percent interest rate over 10 years].

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[4] This is the cost for every year of the rule except the first year. Because of the phase-in, in the first year establishments with 250 or more employees only have to submit their summary data, at a cost of $239,197. All other costs are unaffected by the phase-in.

The Chamber of Commerce asserts that "OSHA's cost-benefit analysis is deeply flawed" for multiple reasons and derives its own total costs of the regulation at over $1.1 billion (Ex. 1396). In the submitted comment, the Chamber states one of the sources of the higher cost would "result from companies more closely scrutinizing whether an injury or illness is recordable and hence reportable." The discussion of this topic focused on the legal case of *Caterpillar Logistics Inc.* vs *Solis,* to "illustrate the time and resources that employers will be forced to expend in making these recordability decisions." In their submitted comments, they describe the difficulty of diagnosing the source of musculoskeletal disorders (ergonomic injuries) which they cite as "34% of all purported nonfatal workplace injuries and illnesses" based on BLS statistics. The Chamber stated that "OSHA's estimated costs barely scratch the surface of the resources that this proposed rule will require." Given that the costs to Caterpillar are associated entirely with OSHA's current part 1904 regulation, OSHA believes that this issue is not relevant to this rulemaking.

In their discussion of costs, the Chamber provides its own estimates for three specific elements: reviewing the rule, re-programming information systems, and training. They state, "if each firm on average spent just one hour to review the rule's compliance requirements, the initial year cost would be over $342 million." The Chamber based its cost estimate on the BLS 2013 average compensation for private sector managers and administrators, and a total count of 7.4 million separate establishments. It should be noted that the overwhelming majority of these establishments are very small firms with fewer than 11 employees and firms in low-hazard industries that are partially exempt from OSHA's recordkeeping requirements. These firms already know that this rulemaking does not apply to them, because they are not required to routinely keep OSHA injury and illness records under part 1904.

Using reports by companies surveyed about HR information systems that would need to be modified, the Chamber estimates an initial-year cost of over $440 million to re-program information systems and software. The Chamber's comments describe multiple challenges associated with the costs for electronic submissions, including the integration of software or databases, and up to 16 hours of professional labor to retool information systems and software. The Chamber states, "The majority of employers will find it necessary to change existing records systems and procedures in order to compile and submit information according to the format and periodicity of this proposed rule's reporting requirement." The Chamber estimates startup software modification costs of over $5,000 for large firms and $1,000 for small firms. These estimates seem high. The typical large firm has to track an average of 21 one-page records. It is difficult to imagine how it would be possible to spend $5,000 on a system designed to track 21 one-page records. In any case, however, firms must already track these records, although they need not do so electronically, so there is no need for a new system of any kind as a result of the final rule. In the case of small firms, the Chamber estimated that there would be $1,000 in software costs associated with submitting data on a one-page form that the employer already is required to fill out. OSHA believes that it is extremely unlikely that a small firm would spend $1,000 for this purpose.

Lastly in the submitted cost comments, the Chamber estimates training costs at nearly $150 million, "based on just one hour of training plus the average cost for commercial occupational safety training materials." The Chamber's estimated training cost would be for corporate managers who "will need to be trained to comply with the reporting formats, schedules and procedures." As discussed above, OSHA believes that such training is unnecessary for a person competent in computer use (or smart phone use) to fill in an on-line form.

C. Benefits

As OSHA explained in the preamble to the proposed rule, OSHA anticipates that establishments' electronic submission of establishment-specific injury/illness data will improve OSHA's ability to identify, target, and remove safety and health hazards, thereby preventing workplace injuries, illnesses, and deaths. In addition, OSHA believes that the data submission requirements of the final rule will improve the quality of the information and lead employers to increase workplace safety and health.

The Agency plans to make the injury and illness data public, as encouraged by President Obama's Open Government Initiative. Online access to these data will allow the public, including employees and potential employees, researchers, employers, unions, and workplace safety and health consultants, to use and benefit from the data. It will support the development of innovative ideas and allow everybody with a stake in workplace safety and health to participate in improving occupational safety and health.

The data collected by BLS is mostly used in the aggregate. While BLS makes micro data available in a restricted way to researchers, OSHA will make micro data, including case data, available to researchers and the public with far fewer restrictions.

The BLS SOII is used as a basis for much of the research on workplace safety and health in the US. Typical examples include Economic Burden of Occupational Injury and Illness in the United States, by J. Paul Leigh (2011); Analyzing the Equity and Efficiency of OSHA Enforcement, by Wayne B. Gray and John T. Scholz (1991); Establishment Size and Risk of Occupational Injury, by Dr. Arthur Oleinick MD, JD, MPH, Jeremy V. Gluck Ph.D., MPH, and Kenneth E. Guire (1995); and Occupational Injury Rates in the U.S Hotel Industry, by Susan Buchanan *et al.* in the American Journal of Industrial Medicine (2010). Some of these studies, such as Gray and Sholtz, use establishment-specific data previously only available on site at BLS.

The database resulting from this final rule will provide for the use of establishment-specific data without having to work under the restrictions imposed by BLS for the use of confidential data. It would also provide data on injury and illness classifications that are not currently available from any source, including the BLS SOII. Specifically, under this collection, there would be case-specific data for injuries and illnesses that do not involve days away from work. The BLS case and demographic data is limited to cases involving days away from work and a small subset of cases involving restricted work activity.

In order to determine possible monetary benefits to this rule, OSHA calculated the value of statistical life (VSL) using Viscusi & Aldy's (2003) meta-analysis of studies in the economics literature that use a willingness-to-pay methodology to estimate the imputed value of life-saving programs. The authors found that each fatality avoided was valued at approximately $7 million in 2000 dollars. Using the GDP Deflator (Source: *https://research.stlouisfed.org/fred2/series/GDPDEF/#*), OSHA estimated that this $7 million base number in 2000 dollars yields an estimate of $9 million in 2012 dollars for each fatality avoided.

Many injuries, illnesses, and fatalities can be prevented at minimal cost. For example, the costs of greater use of already-purchased personal protective equipment are minimal, yet many fatalities described in OSHA's inspection data systems could have been prevented through the use of available personal protective equipment. This includes fatalities related to falls when a person was wearing fall protection but did not have the lanyard attached and to electric shocks where arc protection was available but unused or left in the truck. For such minimal-cost preventative measures, assuming they have costs of prevention of less than $1 million per fatality prevented and using the VSL of $9 million and other parameters typically used in OSHA benefits, if the final rule leads to either 1.5 fewer fatalities or 0.025 percent fewer injuries per year, the rule's benefits will be equal to or greater than the costs. Many accident-prevention measures will have some costs, but even if these costs are 75 percent of the benefits, the final rule will have benefits exceeding costs if it prevented 4.8 fatalities or 0.8 percent fewer injuries per year. OSHA expects the rule's beneficial effects to exceed these values.

OSHA received many comments concerning the possible benefits, or lack of benefits, for the final rule. Some of the benefit suggestions were innovative. One commenter suggested that having establishment-level injury and illness data on-line will be valuable for local medical care practitioners who can check to see whether their patient's illness or injury is because of their job (Ex. 1106). The Council of State and Territorial Epidemiologists (CSTE) commented, "Availability of on line data on work-related injuries and illnesses will allow health care practitioners to assess the occurrence of particular injuries and illnesses at the establishments where their patients work" (Ex. 1106).

CSTE provided an example of a similar regulation in Massachusetts which did reduce workplace injuries (Ex. 1106). The study by Laramie *et al.* (2011) showed that after implementing a needlestick injury reporting program in Massachusetts, the hospitals required to submit annual injury summaries had a 22 percent decrease in needle stick injuries over 5 years. While OSHA does not claim that this data collection initiative will result in a 5 percent annual decrease in injuries and illnesses, even two-hundredths of a percent decrease in injuries and illnesses would be an overall benefit of 400 fewer workplace injuries and illnesses in the United States per year.

Many commenters suggested that the benefits of this information collection and dissemination would be dissipated because of the poor quality of the information collected (Exs. 1219, 1333, 1391, 1199, 1343, 1342, 1110, 1110, 1402, 0258, 1359).

In response, OSHA notes that information is a unique good, which has special properties including non-exclusion and non-rivalness, and that the absence of information can create a market failure. The presence of some information can help to correct a market failure, even if the information is not perfect. The information can still provide a signal to the economic actors (firms, establishments, workers, etc.) even if the information stream is noisy.

The labor market may suffer from information asymmetries. If employers know the actual risk of performing a job and job applicants believe the job is safer than it actually is, then employees may accept a lower wage, in other words, a less efficient wage. The classic economics article on market information asymmetries is Akerlof's "The Market for Lemons", which describes a theoretical model for the market for used cars. For employers, there is an incentive to misrepresent the safety of their workplace because it would allow them to hire labor for less than the market clearing wage.

As discussed above, a common complaint of commenters was that injury and illness summaries are lagging, rather than leading, indicators of safety problems (Exs. 0027, 0163, 0210, 0250, 0258, 1109, 1124, 1193, 1194, 1198, 1204, 1206, 1217, 1219, 1222, 1275, 1279, 1321, 1326, 1331, 1333, 1334, 1336, 1339, 1341, 1342, 1343, 1355,, 1360, 1363, 1373, 1376, 1380, 1389, 1390, 1391, 1392, 1393, 1396, 1399, 1400, 1402, 1406, 1408, 1409, 1410, 1411, 1413, 1416, 1417, 1430, 1467, 1489). One commenter, the American Health Care Association (AHCA) commented, "Despite OSHA's alleged position regarding the value of leading indicators as opposed to lagging indicators, OSHA continues to push employers into focusing resources and energy in the wrong direction" (Ex. 1194). Another commenter, the Mechanical, Electrical, Sheet Metal Alliance (MCAA), stated: ". . . OSHA Incidence Rates are poor indicators of safety performance" (Ex. 1363). MCAA writes further that "Construction owners often determine whether contractors are eligible to bid on their projects based on the owner's perception of the contractors' safety performance. Owner's evaluation of a company's lagging indicators on the OSHA's [sic] Web site would be misleading with regard to that company's safety culture and safety performance" (Ex. 1363). OSHA disagrees, instead believing that OSHA's Web site information is better than no information and that it won't be misleading in the context of hundreds or thousands of other similar establishments reporting their injury and illness rates, which will be available for comparison.

The nomenclature of leading versus lagging indicators is unfortunate. OSHA is not requiring an annual data collection to attempt to judge the safety performance of any particular establishment, but rather to collect annual injury and illness data to use in ways similar to how the data collected from the ODI was used already. OSHA does not have a strong opinion on the question of injury and illness data as a lagging indicator, but the Agency knows that on average, current-year injury/illness rates are related to past-year as well as future-year injury and illness rates. OSHA wants to collect this information; further, the Agency has been requiring many establishments to record this information for decades. As discussed elsewhere, this data collection effort is not an exercise in judging safety and health reputations.

Other commenters who commented that the collection and electronic publication of these records would be helpful included many labor unions. A representative comment is from the International Brotherhood of Teamsters (IBT), which wrote that they currently have great difficulty obtaining these records for their membership from unionized workplaces. The IBT wrote, "The cases are provided as an illustration of the fact that employers frequently deny union representatives access to this information, forcing the union to pursue charges with the NLRB" (Ex. 1381).

D. Economic Feasibility

OSHA concludes that the final rule will be economically feasible. For the annual reporting requirement, affecting establishments with 250 or more employees, the average cost per affected establishment will be $215 per year. For the annual reporting requirement, affecting establishments with 20 to 249 employees in designated high-hazard industries, the average cost per affected establishment will be $11.13 per year. In addition, the non-discrimination provision, which has a cost of $5.86, on average, in the first year for each of the 1.3 million establishments subject to the rule, should also be economically feasible. These costs will not affect the economic viability of these establishments.

E. Regulatory Flexibility Certification

The part of the final rule requiring annual reporting for establishments with 250 or more employees will affect some small firms, according to the definition of small firm used by the Small Business Administration (SBA). In some sectors, such as construction, where SBA's definition only allows relatively smaller firms, there are unlikely to be any firms with 250 or more employees that meet SBA small-business definitions. In other sectors, such as manufacturing, a small minority of SBA-defined small businesses will be subject to this rule. Thus, this part of the final rule will affect only a small percentage of all small firms. However, because some small firms will be affected, especially in manufacturing, OSHA has examined the impacts on small businesses of the costs of this rule. OSHA's procedures for assessing the significance of final rules on small businesses suggest that costs greater than 1 percent of revenues or 5 percent of profits may result in a significant impact on a substantial number of small businesses. To meet this level of significance at an estimated annual average cost of $215 per affected establishment per year, annual revenues for an establishment with 250 or more employees would have to be less than $21,500, and annual profits would have to be less than $4,300. These are extremely unlikely combinations of revenue and profits for firms of this size and would only occur for a very small number of firms in severe financial distress.

The part of the final rule requiring annual electronic submission of data from establishments with 20 to 249 employees in designated industries will also affect some small firms. As stated above, costs greater than 1 percent of revenues or 5 percent of profits may result in a significant economic impact on a substantial number of small businesses. To meet this level of significance at an estimated annual average cost of $11.13 per affected establishment per year, annual revenues for an establishment with 20 to 249 employees would have to be less than $1,113, and annual profits would have to be less than $226. These are extremely unlikely combinations of revenue and profits for establishments of this size.

As a result of these considerations, per section 605 of the Regulatory Flexibility Act, OSHA proposes to certify that this final rule will not have a significant economic impact on a substantial number of small entities. Thus, OSHA did not prepare an initial regulatory flexibility analysis or conduct a SBREFA Panel. OSHA requested comments on this certification. Many commenters stated that OSHA should have held a SBREFA Panel (Exs. 0179, 0205, 0250, 0255, 1092, 1103, 1113, 1123, 1190, 1199, 1200, 1205, 1208, 1209, 1211, 1216, 1217, 1275, 1278, 1343, 1356, 1359, 1370, 1387, 1395, 1396, 1408, 1410, 1411, 1421). Other commenters stated that specific aspects of the proposed regulation brought it to the level that should require a SBREFA Panel review. The American Public Power Association (APPA) commented, "While OSHA representatives have asserted that the new elements of the proposed rule are only extensions of existing requirements, APPA is of the opinion that the proposed rule includes profound changes to the scope of the existing framework. As such, OSHA should have convened a Small Business Advocacy Review panel per the Small Business Regulatory Enforcement Fairness Act ("SBREFA") to analyze the potential impact on the small business community" (Ex. 1410).

In response, OSHA continues to assert that this regulation is similar to the ODI, though with a larger number of participating establishments. That data collection initiative ran successfully for nearly 20 years.

In another example, the International Association of Drilling Contractors wrote, "While OSHA acknowledges a small portion of businesses do not have immediate access to computers or the Internet, the agency has not put the rule before a small business review panel as required under the Small Business Regulatory Enforcement Fairness Act of 1996 . . ." (Ex. 1199). OSHA's response to the issue of computer and Internet access is discussed above.

Despite the comments, OSHA continues to believe that even if the costs per small establishment were ten or twenty times higher than the tiny per establishment costs of about $10 per average small business, those costs would be nowhere near one percent of revenues or five percent of profits. OSHA does note that during its past two SBREFA Panel exercises, in 2012 (on Injury and Illness Prevention Programs) and again in 2014 (on Infectious Diseases), all small-business panel participants had access to computers, the Internet, and email.

VII. Unfunded Mandates

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*), as well as Executive Order 12875, this final rule does not include any federal mandate that may result in increased expenditures by state, local, and tribal governments, or increased expenditures by the private sector of more than $100 million.

Section 3 of the Occupational Safety and Health Act makes clear that OSHA cannot enforce compliance with its regulations or standards on the U.S. government "or any State or political subdivision of a State." Under voluntary agreement with OSHA, some States enforce compliance with their State standards on public sector entities, and these agreements specify that these State standards must be equivalent to OSHA standards. Thus, although OSHA may include compliance costs for affected public sector entities in its analysis of the expected impacts associated with the final rule, the rule does not involve any unfunded mandates being imposed on any State or local government entity.

Based on the evidence presented in this economic analysis, OSHA concludes that the final rule would not impose a Federal mandate on the private sector in excess of $100 million in expenditures in any one year. Accordingly, OSHA is not required to issue a written statement containing a qualitative and quantitative assessment of the anticipated costs and benefits of the Federal mandate, as required under Section 202(a) of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532(a)).

VIII. Federalism

The final rule has been reviewed in accordance with Executive Order 13132 (64 FR 43255 (Aug. 10, 1999)), regarding Federalism. The final rule is a "regulation" issued under Sections 8 and 24 of the OSH Act (29 U.S.C. 657, 673) and not an "occupational safety and health standard" issued under Section 6 of the OSH Act (29 U.S.C. 655). Therefore, pursuant to section 667(a) of the OSH Act, the final rule does not preempt State law (29 U.S.C. 667(a)). The effect of the final rule on states is discussed in section IX. State Plan States.

IX. State Plan States

For the purposes of section 18 of the OSH Act (29 U.S.C. 667) and the requirements of 29 CFR 1904.37 and

1902.7, within 6 months after publication of the final OSHA rule, state-plan states must promulgate occupational injury and illness recording and reporting requirements that are substantially identical to those in 29 CFR part 1904 "Recording and Reporting Occupational Injuries and Illnesses." All other injury and illness recording and reporting requirements (for example, industry exemptions, reporting of fatalities and hospitalizations, record retention, or employee involvement) that are promulgated by state-plan states may be more stringent than, or supplemental to, the federal requirements, but, because of the unique nature of the national recordkeeping program, states must consult with OSHA and obtain approval of such additional or more stringent reporting and recording requirements to ensure that they will not interfere with uniform reporting objectives (29 CFR 1904.37(b)(2), 29 CFR 1902.7(a)).

There are 27 state plan states and territories. The states and territories that cover private sector employers are Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, and Wyoming. Connecticut, Illinois, New Jersey, New York, and the Virgin Islands have OSHA-approved state plans that apply to state and local government employees only.

X. Environmental Impact Assessment

OSHA has reviewed the provisions of this final rule in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality (CEQ) NEPA regulations (40 CFR parts 1500–1508), and the Department of Labor's NEPA Procedures (29 CFR part 11). As a result of this review, OSHA has determined that the final rule will have no significant adverse effect on air, water, or soil quality, plant or animal life, use of land, or other aspects of the environment.

XI. Office of Management and Budget Review Under the Paperwork Reduction Act of 1995

The final rule contains collection of information (paperwork) requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) and OMB regulations (5 CFR part 1320). The PRA requires that agencies obtain approval from OMB before conducting any collection of information (44 U.S.C. 3507). The PRA defines a "collection of information" as "the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public of facts or opinions by or for an agency regardless of form or format" (44 U.S.C. 3502(3)(A)).

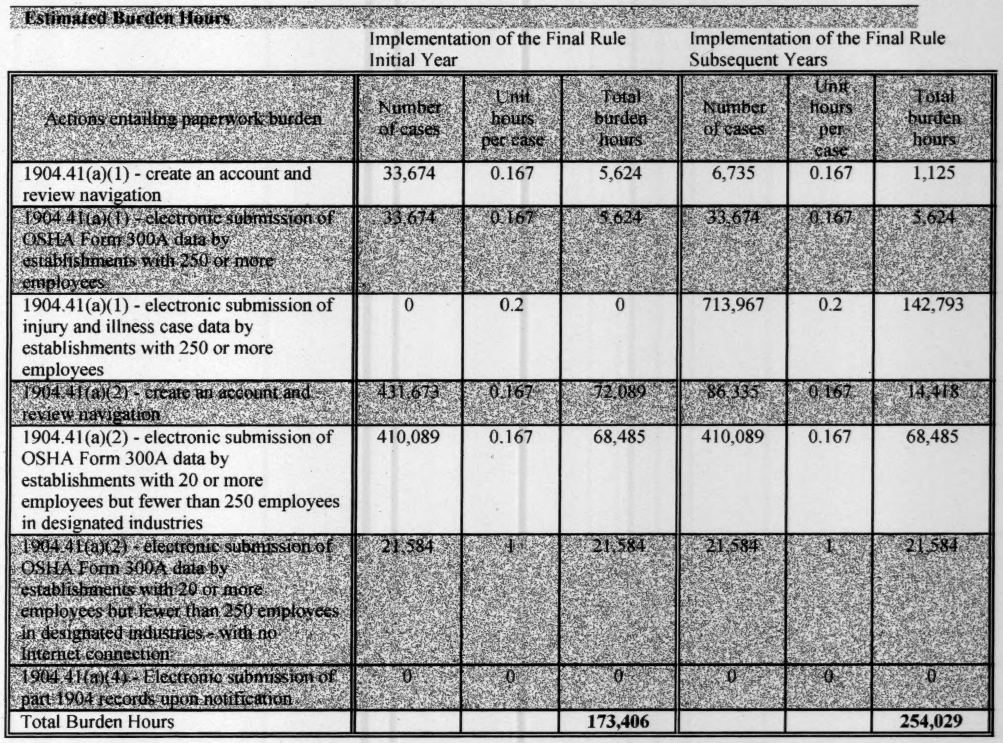
OSHA's existing recordkeeping forms consist of the OSHA 300 Log, the 300A Summary, and the 301 Incident Report. These forms are contained in the Information Collection Request (ICR) (paperwork package) titled 29 CFR part 1904 Recording and Reporting Occupational Injuries and Illnesses, which OMB approved under OMB Control Number 1218–0176 (expiration date 01/31/2018).

The final rule affects the ICR estimates in two programmatic ways: (1) Establishments that are subject to the part 1904 requirements and have 250 or more employees must electronically submit to OSHA on an annual basis the required information recorded on their OSHA Forms 300, 301, and 300A; and (2) Establishments in certain designated industries that have 20 to 249 employees must electronically submit to OSHA on an annual basis the required information recorded on their OSHA Form 300A. In addition to submitting the required data, employers subject to either of these requirements will also be required to create an account and learn to navigate the collection system.

The final rule also requires employers subject to the part 1904 requirements to inform their employees of their right to report injuries and illnesses. This requirement can be met by posting a recently-revised version of the OSHA Poster. The public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public is not included within the definition of collection of information (5 CFR 1320.3(c)(2)).

The burden hours for the final rule are estimated to be 173,406 for the initial year of implementation and 254,029 for subsequent years. There are no capital costs for this collection of information.

The table below presents the new components of the rule that comprise the ICR estimates.



Estimated Burden Hours

	Implementation of the Final Rule Initial Year			Implementation of the Final Rule Subsequent Years		
Actions entailing paperwork burden	Number of cases	Unit hours per case	Total burden hours	Number of cases	Unit hours per case	Total burden hours
1904.41(a)(1) - create an account and review navigation	33,674	0.167	5,624	6,735	0.167	1,125
1904.41(a)(1) - electronic submission of OSHA Form 300A data by establishments with 250 or more employees	33,674	0.167	5,624	33,674	0.167	5,624
1904.41(a)(1) - electronic submission of injury and illness case data by establishments with 250 or more employees	0	0.2	0	713,967	0.2	142,793
1904.41(a)(2) - create an account and review navigation	431,673	0.167	72,089	86,335	0.167	14,418
1904.41(a)(2) - electronic submission of OSHA Form 300A data by establishments with 20 or more employees but fewer than 250 employees in designated industries	410,089	0.167	68,485	410,089	0.167	68,485
1904.41(a)(2) - electronic submission of OSHA Form 300A data by establishments with 20 or more employees but fewer than 250 employees in designated industries - with no Internet connection	21,584	1	21,584	21,584	1	21,584
1904.41(a)(4) - Electronic submission of part 1904 records upon notification	0	0	0	0	0	0
Total Burden Hours			**173,406**			**254,029**

As required by 5 CFR 1320.5(a)(1)(iv) and 1320.8(d)(2), the following paragraphs provide information about this ICR.

1. *Title:* 29 CFR part 1904 Recording and Reporting Occupational Injuries and Illnesses.

2. *Number of respondents:* OSHA requires establishments that are required to keep injury and illness records under part 1904, and that had 250 or more employees in the previous year, to submit information from these records to OSHA or OSHA's designee, electronically, on an annual basis. There are approximately 34,000 establishments that will be subject to this requirement and that will submit detailed case characteristic data on approximately 700,000 occupational injuries and illnesses per year. OSHA also proposes to require establishments that are required to keep injury and illness records under part 1904, had 20 to 249 employees in the previous year, and are in certain designated industries to electronically submit the information from the OSHA annual summary form (Form 300A) to OSHA or OSHA's designee on an annual basis. There are approximately 430,000 establishments that will be subject to this requirement. Finally, OSHA proposes to require all employers who receive notification from OSHA to electronically submit specified information from their injury and illness records to OSHA or OSHA's designee. This requirement will only incur a paperwork burden when the agency implements a notice of collection. For each new data collection conducted under this proposed provision, the Agency will request OMB approval under separate PRA control numbers.

3. *Frequency of responses:* Annually.

4. *Number of responses:* 1,644,661.

5. *Average time per response:* Time per response varies from 20 minutes for establishments reporting only under § 1904.41(a)(2), to multiple hours for large establishments with many recordable injuries and illnesses reporting under § 1904.41(a)(1). The average time of response per establishment is 41 minutes.

6. *Estimated total burden hours:* The burden hours for the final rule are estimated to be 173,406 for the initial year of implementation and 254,029 for subsequent years. Also, there is an adjustment decrease of 750,637 burden hours due to decreases in (1) the number of establishments covered by the recordkeeping rule; (2) the number of injuries and illness recorded by covered employers; and (3) the number of fatalities, amputations, hospitalization, and loss of eye reported by employers. The proposed total burden hours for the recordkeeping (part 1904) ICR are 2,667,251.

7. *Estimated costs (capital-operation and maintenance):* There are no capital costs for the proposed information collection.

OSHA received a number of comments relating to the estimated time necessary to meet the paperwork requirements of the proposed changes published in the November 8, 2013 Improve Tracking of Workplace Injuries and Illnesses Notice of Proposed Rulemaking (78 FR 67254–67283) and its August 14, 2014 Supplemental Notice (79 FR 47605–47610). References to documents below are given as "Ex." followed by the document number. The document number is the last sequence of numbers in the Document ID Number on *http://www.regulations.gov.* For example, Ex. 17, the proposed rule, is Document ID Number OSHA–2013–0023–0017. The comments are grouped and addressed by topic.

Topic 1: A number of comments were submitted pertaining to the extra time required to submit data on a quarterly basis, rather than an annual basis (Exs. 157, 247). Paula Loht of Gannett Fleming Inc. wrote, "Based on my calculations, if the proposed reporting requirements are implemented, it would take my two-person staff two weeks of full-time work every quarter to comply, and would also require input from our technical staff. That would be more than 160 person hours, four times per year."

Response: In the final rule, OSHA requires case-specific data to be submitted electronically on an annual basis rather than a quarterly basis. This will effectively reduce the time required to log into the collection system multiple times per year. It will also allow employers to comply with the existing review and certification requirements under § 1904.32 prior to submitting their data to OSHA, eliminating the need for extra review employers would have taken prior to a quarterly submission. An annual submission, rather than a quarterly submission, results in a lower burden.

Topic 2: Several comments were submitted pertaining to the time required to verify the accuracy of the data prior to its submittal to OSHA (Exs. 157, 247, 1205). Rick Hartwig of the Graphic Arts Coalition wrote, "The time estimates by OSHA with regard to the electronic submission process also does not accurately account for the real time it will take an employer or its staff to review the reports, verify information, ensure accuracy of the data entered, enlist the assistance of knowledgeable opinions as necessary, redacting personal information, and to ensure compliance with all applicable regulatory requirements, all prior to submittal to OSHA" (Ex. 1205).

Response: The data is submitted after the employer has certified to the accuracy of the records in accordance with the already existing requirements of § 1904.32, Annual Summary. The time required to review and certify the records is accounted for under this provision. The new reporting requirements under § 1904.41 require the employer to submit the already verified information to OSHA. OSHA, therefore, did not adjust its estimates for this provision.

Topic 3: Several comments were submitted pertaining to the time OSHA used to estimate the submittal of data from the OSHA form 300 (Exs. 247, 1328, 1141). Eric Conn, representing the National Retail Federation (NRF), wrote, ". . . OSHA bases its time estimates on the time it takes employers to submit data to the Bureau of Labor Statistics (BLS) in response to its survey. The data submitted for the BLS survey, however, is more limited in terms of information requested. BLS requests only certain data for up to 15 cases, but the Proposed Regulation would require all relevant Form 300 and/or 300A information from the entire injury and illness record. Thus the time burden would actually be much greater than OSHA predicts" (Ex. 1328).

Response: OSHA agrees that using the estimate of 10 minutes per establishment for entry of the OSHA Forms 300 and 300A data underestimates the time that will be required to respond to this data collection. Establishments with 250 or more employees will be required to submit the Form 300 data for all cases entered on the log. Accordingly, OSHA is now basing its estimation of the time required to submit Log 300 data on the number of injury and illness cases that will be submitted rather than on an estimate of time per establishment. OSHA now estimates employers will require 2 minutes to enter the Form 300 one line entry for each of the 714,000 cases that will be submitted to OSHA. This is in addition to the 10 minutes per establishment for the data from the OSHA Form 300A. Basing estimates on case counts for Form 300 data provides a truer estimate of the total.

Topic 4: Several comments were submitted pertaining to keeping one's records electronically and to submitting a "batch file" in response to the new collection requirements (Exs. 247, 1326, 1336, 1141, 1205). Michael Hall of the Pacific Maritime Association (PMA) wrote, "Under the current recording system, PMA and other employers have not maintained electronic records that are capable of being uploaded or transmitted because they are only inspected during an OSHA inspection. Accordingly, moving to an electronic recording system capable of transmission will be both time consuming and costly" (Ex. 1326). Marc Freedman of the Coalition for Workplace Safety (CWS) wrote, "OSHA does not estimate how many employers currently maintain electronic records. As OSHA asserts, 30 percent of ODI respondents do not *submit* records electronically; therefore, one can assume that these records are not *maintained* electronically. From this, it can be safely assumed that a sizeable number of employers will also be copying the required injury and illness information from the establishment's paper forms into the electronic submission forms—a cost OSHA simply ignores when calculating the average cost per affected establishment with 250 or more employees. Moreover, OSHA has not analyzed whether current existing electronic programs would present such data in a format acceptable to be uploaded to OSHA. Without knowing what types of electronic forms OSHA would consider for uploading, the regulated community is unable to estimate whether uploading such information would impose increased costs" (Ex. 1141).

Response: The final rule does not require employers to adopt an electronic system to record occupational injuries and illnesses and to maintain OSHA Forms 300, 301 and 300A. The new provisions only require employers to submit to OSHA the information they have already recorded. One or more methods of data transmission (other than manual data entry) will be provided, but use is not required. If the employer has software with the ability to export or transmit data in a standard format that meets OSHA's specifications, they may use that method to meet their reporting obligations and minimize their burden to do so. Most commercially available recordkeeping software platforms have such functionality and many large employers regularly use this method for responding to the BLS SOII survey.

OSHA believes many large establishments subject to this requirement will already be keeping their records electronically and will export or transmit the required information rather than entering it into the web form. This will substantially reduce the time needed to comply with the reporting requirement. However, the estimates contained in the Final Economic Analysis (FEA) and the ICR are calculated with the assumption that all submissions will be made by manually entering the required data via the web form. No time savings are included in these estimates for employers that will submit their data through a batch file upload or electronic transmission. OSHA will adjust the estimates under renewed ICRs when we have solid information regarding the percentage of employers that take advantage of batch file upload or electronic transmission.

Topic 5: Several comments were submitted pertaining to the necessity to train employees on how to use the newly created reporting system (Exs. 1205, 1336, 1141). Susan Yashinskie of the American Fuel & Petrochemical Manufacturers (AFPM) wrote, "This estimate is highly inaccurate and significantly understates the costs given the amount of time it will take for employers to learn how to use and navigate the proposed electronic reporting system . . ." (Ex. 1336). Rick Hartwig of the Graphic Arts Coalition wrote, "Regarding the cost estimates outlined within the proposal, they do not account for actual activities and efforts that will be required by the employer. These additional costs can include the training of personnel . . . to learn the different elements of the new system . . .'' (Ex. 1205).

Response: OSHA agrees that employers will require time to create an account and familiarize themselves with the Web site prior to entering and submitting the required data. This will be a onetime cost in the initial year with costs in subsequent years for establishment with employee turnover. OSHA estimates employers will require 10 minutes to accomplish this task.

In addition to these five common topics, several comments were submitted on miscellaneous issues pertaining to paperwork burden.

Bill Taylor of the Public Agency Safety Management Association (PASMA)—South Chapter wrote, ''. . . One of our member sites has approximately 2,600 employees and their estimated cost of compliance with this proposed quarterly reporting requirement is $7,250 . . . This employer also assumed labor costs of $50 per hour, which includes benefits'' (Ex. 157). PASMA's labor cost estimate of $50 per hour including benefits is consistent with OSHA's estimate of $48.78 for an Occupational Health and Safety Specialist to perform the employer's day-to-day recordkeeping duties.

Michael Hall of the Pacific Maritime Association (PMA) wrote, ''OSHA's estimates do not take into account the costs described above that are unique to the maritime industry. In particular, the man-hours that will have to be devoted to attempting to prevent, if possible, duplicative reporting will be enormous'' (Ex. 1326). The costs of properly recording information on OSHA Forms 300, 301 and 300A are already accounted for in the current recordkeeping requirements burden estimates. The new reporting requirements under 1904.41 only require the employer to submit the data that is already recorded.

Marc Freedman of the Coalition for Workplace Safety (CWS) wrote, ''Because of the consequences of recording an injury under this proposal, employers can be expected to involve more experts in some cases. This is particularly the case with musculoskeletal disorders (''MSD'') . . . employers are more likely to incur substantial costs to conduct evaluations similar to Caterpillar's in order to determine whether an injury is truly work-related. This is particularly the case with musculoskeletal disorder injuries. OSHA has not accounted for these additional costs that are likely to flow from this proposed regulation'' (Ex. 1141). OSHA has not adjusted its estimate for the time it requires to determine the recordability of an injury or illness. Employers are already required to certify to the accuracy of the OSHA forms prior to submitting these data. The time required to record cases on the OSHA forms is already accounted for in the estimates. It should be noted that the ''MSD'' column Mr. Freedman references does not exist at this time. OSHA will account for burden associated with future rulemaking requirements in future ICRs. It should also be noted that OSHA currently publishes establishment-specific injury and illness rates on its Web site and has not observed any indication that publication of that data has increased the time needed to record injuries and illnesses. OSHA does not agree with Mr. Freedman's conjecture that publication of the data captured by these revised requirements will result in additional burden for recording injuries and illnesses.

The PRA specifies that Federal agencies cannot conduct or sponsor a collection of information unless it is approved by OMB and displays a currently valid OMB approval number (44 U.S.C. 3507). Also, notwithstanding any other provision of law, respondents are not required to respond to the information collection requirements until they have been approved and a currently valid control number is displayed. OSHA will publish a subsequent **Federal Register** document when OMB takes further action on the information collection requirements in the Recordkeeping and Recording Occupational Injuries and Illnesses rule.

XII. Consultation and Coordination With Indian Tribal Governments

OSHA reviewed this final rule in accordance with Executive Order 13175 (65 FR 67249 (Nov. 9, 2000)) and determined that it does not have ''tribal implications'' as defined in that order. This final rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

List of Subjects

29 CFR Part 1904

Health statistics, Occupational safety and health, Reporting and recordkeeping requirements, State plans.

29 CFR Part 1902

Health statistics, Intergovernmental relations, Occupational safety and health, Reporting and recordkeeping requirements, State plans.

Authority and Signature

This document was prepared under the direction of David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health. It is issued under Sections 8 and 24 of the Occupational Safety and Health Act (29 U.S.C. 657, 673), Section 553 of the Administrative Procedure Act (5 U.S.C. 553), and Secretary of Labor's Order No. 41–2012 (77 FR 3912 (Jan. 25, 2012)).

Signed at Washington, DC, on April 29, 2016.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

Final Rule

For the reasons stated in the preamble, OSHA amends parts 1904 and 1902 of chapter XVII of title 29 as follows:

PART 1904—[AMENDED]

■ 1. The authority citation for part 1904 continues to read as follows:

Authority: 29 U.S.C. 657, 658, 660, 666, 669, 673, Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012).

■ 2. Revise § 1904.35 to read as follows:

§ 1904.35 Employee involvement.

(a) *Basic requirement.* Your employees and their representatives must be involved in the recordkeeping system in several ways.

(1) You must inform each employee of how he or she is to report a work-related injury or illness to you.

(2) You must provide employees with the information described in paragraph (b)(1)(iii) of this section.

(3) You must provide access to your injury and illness records for your employees and their representatives as described in paragraph (b)(2) of this section.

(b) *Implementation*—(1) *What must I do to make sure that employees report work-related injuries and illnesses to me?* (i) You must establish a reasonable procedure for employees to report work-related injuries and illnesses promptly and accurately. A procedure is not reasonable if it would deter or discourage a reasonable employee from accurately reporting a workplace injury or illness;

(ii) You must inform each employee of your procedure for reporting work-related injuries and illnesses;

(iii) You must inform each employee that:

(A) Employees have the right to report work-related injuries and illnesses; and

(B) Employers are prohibited from discharging or in any manner discriminating against employees for reporting work-related injuries or illnesses; and

(iv) You must not discharge or in any manner discriminate against any employee for reporting a work-related injury or illness.

(2) [Reserved]

■ 3. Revise § 1904.36 to read as follows:

§ 1904.36 Prohibition against discrimination.

In addition to § 1904.35, section 11(c) of the OSH Act also prohibits you from discriminating against an employee for reporting a work-related fatality, injury, or illness. That provision of the Act also protects the employee who files a safety and health complaint, asks for access to the part 1904 records, or otherwise exercises any rights afforded by the OSH Act.

Subpart E—Reporting Fatality, Injury and Illness Information to the Government

■ 4. Add an authority citation to subpart E of 29 CFR part 1904 to read as follows:

Authority: 29 U.S.C. 657, 673, 5 U.S.C. 553, and Secretary of Labor's Order 1–2012 (77 FR 3912, Jan. 25, 2012).

■ 5. Revise § 1904.41 to read as follows:

§ 1904.41 Electronic submission of injury and illness records to OSHA.

(a) *Basic requirements*—(1) *Annual electronic submission of part 1904 records by establishments with 250 or more employees.* If your establishment had 250 or more employees at any time during the previous calendar year, and this part requires your establishment to keep records, then you must electronically submit information from the three recordkeeping forms that you keep under this part (OSHA Form 300A Summary of Work-Related Injuries and Illnesses, OSHA Form 300 Log of Work-Related Injuries and Illnesses, and OSHA Form 301 Injury and Illness Incident Report) to OSHA or OSHA's designee. You must submit the information once a year, no later than the date listed in paragraph (c) of this section of the year after the calendar year covered by the forms.

(2) *Annual electronic submission of OSHA Form 300A Summary of Work-Related Injuries and Illnesses by establishments with 20 or more employees but fewer than 250 employees in designated industries.* If your establishment had 20 or more employees but fewer than 250 employees at any time during the previous calendar year, and your establishment is classified in an industry listed in appendix A to subpart E of this part, then you must electronically submit information from OSHA Form 300A Summary of Work-Related Injuries and Illnesses to OSHA or OSHA's designee. You must submit the information once a year, no later than the date listed in paragraph (c) of this section of the year after the calendar year covered by the form.

(3) *Electronic submission of part 1904 records upon notification.* Upon notification, you must electronically submit the requested information from your part 1904 records to OSHA or OSHA's designee.

(b) *Implementation*—(1) *Does every employer have to routinely submit information from the injury and illness records to OSHA?* No, only two categories of employers must routinely submit information from their injury and illness records. First, if your establishment had 250 or more employees at any time during the previous calendar year, and this part requires your establishment to keep records, then you must submit the required Form 300A, 300, and 301 information to OSHA once a year. Second, if your establishment had 20 or more employees but fewer than 250 employees at any time during the previous calendar year, and your establishment is classified in an industry listed in appendix A to subpart E of this part, then you must submit the required Form 300A information to OSHA once a year. Employers in these two categories must submit the required information by the date listed in paragraph (c) of this section of the year after the calendar year covered by the form or forms (for example, 2017 for the 2016 forms). If you are not in either of these two categories, then you must submit information from the injury and illness records to OSHA only if OSHA notifies you to do so for an individual data collection.

(2) *If I have to submit information under paragraph (a)(1) of this section, do I have to submit all of the information from the recordkeeping form?* No, you are required to submit all of the information from the form *except* the following:

(i) Log of Work-Related Injuries and Illnesses (OSHA Form 300): Employee name (column B).

(ii) Injury and Illness Incident Report (OSHA Form 301): Employee name (field 1), employee address (field 2), name of physician or other health care professional (field 6), facility name and address if treatment was given away from the worksite (field 7).

(3) *Do part-time, seasonal, or temporary workers count as employees in the criteria for number of employees in paragraph (a) of this section?* Yes, each individual employed in the establishment at any time during the calendar year counts as one employee, including full-time, part-time, seasonal, and temporary workers.

(4) *How will OSHA notify me that I must submit information from the injury and illness records as part of an individual data collection under paragraph (a)(3) of this section?* OSHA will notify you by mail if you will have to submit information as part of an individual data collection under paragraph (a)(3). OSHA will also announce individual data collections through publication in the **Federal Register** and the OSHA newsletter, and announcements on the OSHA Web site. If you are an employer who must routinely submit the information, then OSHA will not notify you about your routine submittal.

(5) *How often do I have to submit the information from the injury and illness records?* If you are required to submit information under paragraph (a)(1) or (2) of this section, then you must submit the information once a year, by the date listed in paragraph (c) of this section of the year after the calendar year covered by the form or forms. If you are submitting information because OSHA notified you to submit information as part of an individual data collection under paragraph (a)(3) of this section, then you must submit the information as often as specified in the notification.

(6) *How do I submit the information?* You must submit the information electronically. OSHA will provide a secure Web site for the electronic submission of information. For individual data collections under paragraph (a)(3) of this section, OSHA will include the Web site's location in the notification for the data collection.

(7) *Do I have to submit information if my establishment is partially exempt from keeping OSHA injury and illness records?* If you are partially exempt from keeping injury and illness records under §§ 1904.1 and/or 1904.2, then you do not have to routinely submit part 1904 information under paragraphs (a)(1) and (2) of this section. You will have to submit information under paragraph (a)(3) of this section if OSHA informs you in writing that it will collect injury and illness information from you. If you receive such a notification, then you must keep the injury and illness records required by this part and submit information as directed.

(8) *Do I have to submit information if I am located in a State Plan State?* Yes, the requirements apply to employers located in State Plan States.

(9) *May an enterprise or corporate office electronically submit part 1904 records for its establishment(s)?* Yes, if your enterprise or corporate office had ownership of or control over one or more establishments required to submit information under paragraph (a)(1) or (2) of this section, then the enterprise or corporate office may collect and electronically submit the information for the establishment(s).

(c) *Reporting dates.* (1) In 2017 and 2018, establishments required to submit under paragraph (a)(1) or (2) of this section must submit the required information according to the table in this paragraph (c)(1):

Submission year	Establishments submitting under paragraph (a)(1) of this section must submit the required information from this form/these forms:	Establishments submitting under paragraph (a)(2) of this section must submit the required information from this form:	Submission deadline
2017	300A	300A	July 1, 2017.
2018	300A, 300, 301	300A	July 1, 2018.

(2) Beginning in 2019, establishments that are required to submit under paragraph (a)(1) or (2) of this section will have to submit all of the required information by March 2 of the year after the calendar year covered by the form or forms (for example, by March 2, 2019, for the forms covering 2018).

■ 6. Add appendix A to subpart E of part 1904 to read as follows:

Appendix A to Subpart E of Part 1904—Designated Industries for § 1904.41(a)(2) Annual Electronic Submission of OSHA Form 300A Summary of Work-Related Injuries and Illnesses by Establishments With 20 or More Employees but Fewer Than 250 Employees in Designated Industries

NAICS	Industry
11	Agriculture, forestry, fishing and hunting.
22	Utilities.
23	Construction.
31–33	Manufacturing.
42	Wholesale trade.
4413	Automotive parts, accessories, and tire stores.
4421	Furniture stores.
4422	Home furnishings stores.
4441	Building material and supplies dealers.
4442	Lawn and garden equipment and supplies stores.
4451	Grocery stores.
4452	Specialty food stores.
4521	Department stores.
4529	Other general merchandise stores.
4533	Used merchandise stores.
4542	Vending machine operators.
4543	Direct selling establishments.
4811	Scheduled air transportation.
4841	General freight trucking.
4842	Specialized freight trucking.
4851	Urban transit systems.
4852	Interurban and rural bus transportation.
4853	Taxi and limousine service.
4854	School and employee bus transportation.
4855	Charter bus industry.
4859	Other transit and ground passenger transportation.
4871	Scenic and sightseeing transportation, land.
4881	Support activities for air transportation.
4882	Support activities for rail transportation.
4883	Support activities for water transportation.
4884	Support activities for road transportation.
4889	Other support activities for transportation.
4911	Postal service.
4921	Couriers and express delivery services.
4922	Local messengers and local delivery.
4931	Warehousing and storage.
5152	Cable and other subscription programming.
5311	Lessors of real estate.
5321	Automotive equipment rental and leasing.
5322	Consumer goods rental.
5323	General rental centers.
5617	Services to buildings and dwellings.
5621	Waste collection.
5622	Waste treatment and disposal.
5629	Remediation and other waste management services.
6219	Other ambulatory health care services.

NAICS	Industry
6221	General medical and surgical hospitals.
6222	Psychiatric and substance abuse hospitals.
6223	Specialty (except psychiatric and substance abuse) hospitals.
6231	Nursing care facilities.
6232	Residential mental retardation, mental health and substance abuse facilities.
6233	Community care facilities for the elderly.
6239	Other residential care facilities.
6242	Community food and housing, and emergency and other relief services.
6243	Vocational rehabilitation services.
7111	Performing arts companies.
7112	Spectator sports.
7121	Museums, historical sites, and similar institutions.
7131	Amusement parks and arcades.
7132	Gambling industries.
7211	Traveler accommodation.
7212	RV (recreational vehicle) parks and recreational camps.
7213	Rooming and boarding houses.
7223	Special food services.
8113	Commercial and industrial machinery and equipment (except automotive and electronic) repair and maintenance.
8123	Dry-cleaning and laundry services.

PART 1902—STATE PLANS FOR THE DEVELOPMENT AND ENFORCEMENT OF STATE STANDARDS

■ 7. The authority citation for part 1902 is revised to read as follows:

Authority: Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012).

■ 8. In § 1902.7, revise paragraph (d) to read as follows:

§ 1902.7 Injury and illness recording and reporting requirements.

* * * * *

(d) As provided in section 18(c)(7) of the Act, State Plan States must adopt requirements identical to those in 29 CFR 1904.41 in their recordkeeping and reporting regulations as enforceable State requirements. The data collected by OSHA as authorized by § 1904.41 will be made available to the State Plan States. Nothing in any State plan shall affect the duties of employers to comply with § 1904.41.

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Part III

Department of Labor

Employee Benefits Security Administration

Proposed Exemptions From Certain Prohibited Transaction Restrictions; Notice

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Exemptions From Certain Prohibited Transaction Restrictions

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). This notice includes the following proposed exemptions: D–11825, ABARTA, Inc. Pension Plan; D–11846 and D–11847, Sears Holdings 401(k) Savings Plan (the Savings Plan) and the Sears Holdings Puerto Rico Savings Plan (the PR Plan); D–11851 and D–11852, Sears Holdings 401(k) Savings Plan (the Savings Plan) and the Sears Holdings Puerto Rico Savings Plan (the PR Plan); and D–11871 and D–11872, Sears Holdings 401(k) Savings Plan (the Savings Plan) and the Sears Holdings Puerto Rico Savings Plan (the PR Plan).

DATES: All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice.

ADDRESSES: Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N–5700, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Attention: Application No.__, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via email or FAX. Any such comments or requests should be sent either by email to: *moffitt.betty@dol.gov*, or by FAX to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1515, 200 Constitution Avenue NW., Washington, DC 20210.

Warning: All comments will be made available to the public. Do not include any personally identifiable information (such as Social Security number, name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

SUPPLEMENTARY INFORMATION:

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, Subpart B (76 FR 66637, 66644, October 27, 2011).[1] Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

ABARTA, Inc. Pension Plan (the Plan or the Applicant), Located in Pittsburgh, PA

[Application No. D–11825]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act (or ERISA) and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 46637, 66644, October 27, 2011).[2]

Section I. Covered Transactions

If the exemption is granted, provided that the conditions and the definitions set forth below are satisfied, the restrictions of sections 406(a)(1)(A), 406(a)(1)(B), 406(a)(1)(D), 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a) of the Act, and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A), (B), (D) and (E) of the Code, shall not apply to the following proposed transactions (the Covered Transactions):

(a) The in-kind contribution by ABARTA Inc. (ABARTA) to the Plan (the Contribution) of ABARTA's 100% ownership interests (the LLC Interests) in two special purpose entities: Delabarta Pennsylvania Real Estate, LLC (Delabarta Pennsylvania LLC); and Delabarta New York Real Estate, LLC (Delabarta New York LLC) (together, the LLCs): Each of which owns, as its only asset, a parcel of improved real property (a Property);

(b) Following the Contribution: (1) the Plan's leasing of the Property owned 100% by the Delabarta Pennsylvania LLC to an ABARTA subsidiary, Coca-Cola Bottling Company of Lehigh Valley, Inc. (Coca-Cola Lehigh Valley), and a one-time renewal of that lease; and (2) the Plan's leasing of the Property owned 100% by the Delabarta New York LLC to another ABARTA subsidiary, Coca-Cola Bottling Company of Buffalo, Inc. (Coca-Cola Buffalo), and a one-time renewal of that lease. Hereinafter, these two leases are referred to as the Leases, and the two renewals of those Leases are referred to as the Lease Renewals;

(c) The guarantees by Coca-Cola Buffalo and Coca-Cola Lehigh Valley (the Tenants) to the Plan in connection with a make whole obligation (the Make Whole Obligation), and any payments to the Plan in fulfillment of that obligation;

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[1] The Department has considered exemption applications received prior to December 27, 2011 under the exemption procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

[2] For purposes of this proposed exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

(d) Each Tenant's indemnification of the Plan (the Indemnification) in connection with a Leases and a Lease Renewal; and

(e)(1) The Plan's granting of a right of first offer (the Right of First Offer) to each Tenant, whereby the Tenant may purchase a Property or LLC interest from the Plan; and (2) a sale by the Plan of a Property or LLC Interest to a Tenant in connection with a Tenant's exercise of that Right of First Offer.

Section II. Conditions Regarding the In-Kind Contribution Described in Section I(A)

(a) The Independent Fiduciary, as defined in Section X(c) of this proposed exemption, negotiates the terms and conditions of the Contribution, and approves the Contribution as being in the interest of the Plan;

(b) The LLC Interests are contributed to the Plan at their current fair market value, as determined by the Independent Fiduciary, following the Independent Fiduciary's review of an appraisal report (the Appraisal Report) prepared by the Independent Appraiser, as defined in Section X(d) of this proposed exemption;

(c) On the date of the Contribution, the aggregate contributed value of the LLC Interests is no less than the current fair market value of the Properties underlying the LLC Interests, as verified by the Independent Fiduciary;

(d) On the date of the Contribution, ABARTA contributes to the Plan a cash amount that is no less than $500,000;

(e) Immediately following the Contribution, the aggregate fair market value of employer real property and employer securities held by the Plan represents less than 20% of the Plan's assets;

(f) As long as the Properties and/or LLC interests are owned by the Plan, the Properties are not altered in any way that: (1) Diminishes the fair market value or remaining useful life of the Property; (2) affects the structure or systems of any building existing on the Property; or (3) affects an expansion of any building existing on the Property, without the prior written approval of the Independent Fiduciary; and

(g) Following the Contribution, the Plan does not transfer a portion of its ownership interests in the LLCs or in the Properties to a party in interest to the Plan.

Section III. Conditions Regarding the Plan's Leasing of the Properties to the Tenants Described in Section I(B)

(a) The Independent Fiduciary negotiates the terms and conditions of the each Lease and Lease Renewal, and approves the Plan's entering into each Lease and Lease Renewal, as being in the interest of, and protective of, the Plan;

(b) Each Lease and Lease Renewal remains, at all times, a bondable triple net lease, such that all costs attributable to a Property (including, among other things, taxes, insurance, utilities, and non-capital maintenance, repair, and capital improvements) are the responsibility of the Tenant, until the earlier of: (1) The date on which the Property or LLC Interest is first transferred to any person or entity that is not wholly-owned by the Plan; (2) the date on which the Plan sells a controlling interest in the LLC to an entity that is not wholly-owned by the Plan; or (3) the date the Lease or Lease Renewal terminates by operation of law;

(c) Any amendment to a Lease or Lease Renewal must be negotiated and approved by the Independent Fiduciary; however, in no event may any amendment be inconsistent with the terms of this exemption, if granted; and

(d) For each Lease Renewal, all provisions of the Lease on which the Lease Renewal is based, with the exception of the specific rent amount and any escalator provision, remain in effect.

Section IV. The Make Whole Obligation Described in Section I(C)

(a) After the Contribution, as of the earlier of: (1) The date of a sale by the Plan of a Property (or an LLC Interest) (a Sale Date); or (2) the date that is five years from the date of the Contribution (hereinafter, a First Calculation Date), if (A)(i) the proceeds received from the fair market value sale of a Property (or LLC interest), in the case of a sale, or (ii) the current fair market value of the Property (or the LLC interest) as of the First Calculation Date, in the case in which there has not been a sale, plus (B) any income generated by the Property during that period, less (C) any expenses attributable to the Property (or the LLC Interest) paid by the Plan during that period, is less than (D) the fair market value of such Property (or the LLC Interest) at the time of the Contribution, plus (E) an amount equal to a 5% percent rate of return on such Contributed Value during that period, compounded annually; then the Tenant must contribute an amount of cash to the Plan equal to any such difference, within 60 days of the Sale Date or First Calculation Date;

(b) If the Plan continues to hold a Property or LLC Interest during all or a portion of any of the three consecutive five year periods that follow the First Calculation Date (each, a Lookback Period), with respect to any of these three Lookback Periods, as of the earlier of: (1) A Sale Date; or (2) a date that is five years from the first day of the Lookback Period (a Subsequent Calculation Date), if (A)(i) the proceeds received from the fair market value sale of a Property (or LLC interest), in the case of a sale, or (ii) the current fair market value of the LLC interest as of the applicable Subsequent Calculation Date, in the case in which there has not been a sale, plus (B) any income generated by the Property during that period, (C) less any expenses paid by the Plan during that period regarding the LLC interest or Property, is less than (D) the fair market value of such LLC Interest as of the first day of the applicable Lookback Period, plus (E) an amount equal to a 5% percent rate of return on such Contributed Value during that period, compounded annually; then the Tenant must contribute to the Plan an amount of cash equal to any such difference, within 60 days of the Sale Date or Subsequent Calculation Date; and

(c) The Plan receives the full amount that the Plan may be due under the Make Whole Obligation within 60 days of the applicable Sale Date, Calculation Date, or Subsequent Calculation Date, as verified by the Independent Fiduciary.

Section VI. Tenants' Indemnification of the Plan Described In Section I(d)

(a) In connection with each Lease and Lease Renewal, and as set forth in writing therein, the Tenant indemnifies, defends upon request, and holds the Plan harmless from any, and against all, losses, penalties and court costs related to: (1) The Tenant's use, repair, management, lease, sublease, maintenance or operation of a Property, (2) any violation of any applicable environmental laws, the Americans with Disabilities Act (the ADA), and other health and/or safety laws; and (3) any default by the Tenant under the Lease or Lease Renewal; and

(b) Any amount owed the Plan in connection with a Tenant's indemnification of the Plan, as described in the preceding paragraph, is negotiated and approved by the Independent Fiduciary, and paid to the Plan within the timeframe set forth by the Independent Fiduciary.

Section VII. The Right of First Offer and the Sale by the Plan of a Property or an LLC Interest Described in Section I(E)

(a) During the term of the Lease and any Lease Renewal, the Independent Fiduciary is solely responsible for determining whether, when, and under what terms the Plan may prudently sell one or both of: (1) The LLCs; or (2) the Properties;

(b) During the term of the Lease and any Lease Renewal, the Independent Fiduciary must approve any sale by the Plan of one or both of: (1) The Properties; or (2) the LLC Interests, as being in the interest of, and protective of, the Plan;

(c) The Independent Fiduciary may not implement the Right of First Offer unless the Independent Fiduciary has first negotiated the terms and conditions of a proposed sale of an LLC Interest (or a Property) to a party that is unrelated to ABARTA or any of its affiliates (the Unrelated Proposed Sale);

(d) Any sale of an LLC Interest or Property to ABARTA or any of its affiliates (hereinafter, ABARTA) pursuant to the Right of First Offer, must equal the greater of: (1) The price negotiated by the Independent Fiduciary, as between the Plan and the party that is unrelated to ABARTA; or (2) the current fair market value of the Property, as determined by the Independent Appraiser; and

(e) If ABARTA does not purchase the Property or LLC Interest under the same terms as the terms associated with the Unrelated Proposed Sale, the Plan may sell the Property or LLC Interest to the unrelated third party within 360 days without triggering a new Right of First Offer.

Section VIII. The Independent Fiduciary

(a) The Independent Fiduciary represents the interests of the Plan for all purposes with respect to the Covered Transactions;

(b) The Independent Fiduciary must:

(1) Review, negotiate and approve the terms and conditions of each Covered Transaction;

(2) Review and approve the terms of the transfer agreement (the Transfer Agreement) that evidences the Contribution;

(3) Monitor and enforce the Plan's rights and interests with respect to the Properties;

(4) Monitor ABARTA's compliance with the terms of this exemption, including all obligations set forth under the Leases; and

(5) Take all steps that are necessary and proper to protect the Plan in the event of any non-compliance by ABARTA.

Section IX. General Conditions

(a) The Plan does not pay any real estate fees, commissions, costs or other expenses in connection with the proposed transactions, including any fees that are currently charged, or any fees which accrue in the future; and

(b) The terms and conditions of the proposed transactions are no less favorable to the Plan than those obtainable under similar circumstances when negotiated at arm's-length with unrelated third parties.

Section X. Definitions

(a) The term ABARTA means ABARTA, Inc., and any of its affiliates.

(b) The term "affiliate" means: (1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person; (2) any officer, director, employee, relative, or partner in any such person; or (3) any corporation or partnership of which such person is an officer, director, partner, or employee.

For the purposes of clause (a)(1) above, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) The term "Independent Fiduciary" means Evercore Trust Company (Evercore), or another fiduciary of the Plan who: (1) Is independent of or unrelated to ABARTA and the Tenants, and has the appropriate training, experience, and facilities to act on behalf of the Plan regarding the Covered Transactions in accordance with the fiduciary duties and responsibilities prescribed by the Act (including, if necessary, the responsibility to seek the counsel of knowledgeable advisors to assist in its compliance with the Act); and (2) if relevant, succeeds Evercore in its capacity as Independent Fiduciary to the Plan in connection with the Covered Transactions. The Independent Fiduciary will not be deemed to be independent of and unrelated to ABARTA and the Tenants if: (1) Such Independent Fiduciary directly or indirectly controls, is controlled by or is under common control, with ABARTA or the Tenants; (2) such Independent Fiduciary directly or indirectly receives any compensation or other consideration in connection with any transaction described in this exemption other than for acting as Independent Fiduciary in connection with the transactions described herein, provided that the amount or payment of such compensation is not contingent upon, or in any way affected by, the Independent Fiduciary's ultimate decision; and (3) the annual gross revenue received by the Independent Fiduciary, during any year of its engagement, from ABARTA and the Tenants, exceeds 2% of the Independent Fiduciary's annual gross revenue from all sources (for federal income tax purposes) for is prior tax year.

(d) The term "Independent Appraiser" means an individual or entity meeting the definition of a "Qualified Independent Appraiser" under Department Regulation 25 CFR 2570.31(i) retained to determine, on behalf of the Plan, the fair market value of the Properties as of the date of the Contribution.

Summary of Facts and Representations[3]

The Parties

1. ABARTA, which was founded in 1933 by Rolland Adams, currently maintains its headquarters in Pittsburgh, Pennsylvania. ABARTA is privately-owned and operates in the oil and gas, soft-drink bottling, and frozen food industries. Within its soft-drink bottling division, ABARTA owns and operates four Coca-Cola bottling companies, two of which are Coca-Cola Buffalo and Coca-Cola Lehigh Valley. As of March 31, 2015, ABARTA held assets totaling $238,824,000 and liabilities totaling $182,748,000.

Coca-Cola Lehigh Valley, which was purchased by ABARTA in 1963, owns the exclusive franchise rights in perpetuity to distribute products of the Coca-Cola Company throughout Lancaster, Northampton, and Lehigh counties, in Pennsylvania, and part of Warren County, in New Jersey. Coca-Cola Lehigh Valley has generated $3 million in average annual Earnings Before Interest, Tax, Depreciation, and Amortization (EBITDA) since 2010.

Coca-Cola Buffalo, which was purchased by ABARTA in 1980, owns the exclusive franchise rights in perpetuity to distribute products of the Coca-Cola Company throughout eight counties in and around Buffalo, New York. Coca-Cola Buffalo has generated $2.5 million in average annual EBITDA since 2010.

2. The Plan, which was adopted by ABARTA on January 1, 1981, is a noncontributory, defined benefit pension plan which covers approximately 4,000 non-union employees of ABARTA. As of January 1, 2015, the Plan had 1,265 participants. As of July 31, 2015, the Plan held assets totaling $36,737,158. The Plan Administrator is a Committee, the members of which are designated by ABARTA's Board of Directors. Contributions required to fund the Plan are remitted to and held under the ABARTA, Inc. Defined Benefit Master

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[3] The Summary of Facts and Representations is based on the Applicant's representations and does not reflect the views of the Department, unless indicated otherwise.

Trust (the Master Trust), the custodian of which is Fidelity Management Trust Company (Fidelity). In addition to ABARTA, seven other companies, including Coca-Cola Lehigh Valley and Coca-Cola Buffalo, participate in the Master Trust.

The Plan's trustees are John F. Blitzer III, Katherine W. Fedor, and William F. Holtz (the Trustees). Each of the Trustees serves concurrently as an officer of ABARTA: Mr. Blitzer, as Director, President and CEO; Ms. Fedor, as Secretary; and Mr. Holtz as Vice President, Treasurer, and Secretary. In addition, two Trustees, Mr. Holtz and Ms. Fedor, serve as officers for the LLCs, but, if this exemption is granted, they will not receive compensation from the Plan as officers of the LLCs following the Contribution.

The Trustees have delegated investment management discretion over Plan assets to Fidelity, subject to a written investment policy approved by the Trustees which specifies ranges for asset allocations (the Investment Policy Statement). The Investment Policy Statement expressly permits the in-kind contribution of employer real property to the Plan.

The LLCs

3. ABARTA is the sole member and 100% owner of both Delabarta New York LLC and Delabarta Pennsylvania LLC. The Applicant represents that the LLCs do not have any employees and there are no significant costs associated with ownership, other than a nominal annual administrative filing fee required by the State of New York, which ABARTA will continue to pay following the Contribution.

Each LLC owns, as its only asset, a parcel of unencumbered real property, as well as certain buildings situated on each. The sole asset of Delabarta Lehigh Valley LLC consists of unencumbered title to approximately 10.615 acres of land and one improvement thereon, located at 2150 Industrial Drive Bethlehem, Pennsylvania (the Pennsylvania Property). Coca-Cola Lehigh Valley purchased the Pennsylvania Property as a vacant parcel of land in 1980 and subsequently constructed a 116,751-square foot warehouse/distribution facility on the Property in 1981. Currently, the Pennsylvania Property is 100% occupied by Coca-Cola Lehigh Valley.

The sole asset of Delabarta New York LLC consists of unencumbered title to approximately 9.21 acres of land and two improvements thereon, located at 150 and 200 Milens Road in the Town of Tonawanda, New York (the New York Property). Coca-Cola Buffalo purchased the New York Property in 1959 and subsequently constructed the two warehouse facilities in 1960 and 1967. Currently, the New York Property is 100% occupied by Coca-Cola Buffalo.

Hereinafter, Coca-Cola Lehigh Valley and Coca-Cola Buffalo are referred to as the Tenants.

The Contribution

4. ABARTA has requested an administrative exemption from the Department in order to contribute the LLC Interests to the Plan. To evidence the Contribution, ABARTA and the Plan will enter into a written transfer agreement (the Transfer Agreement), which will govern the terms upon which the LLC Interests will be contributed to and held by the Plan.

As will be stated in the Transfer Agreement, the Independent Fiduciary must act on behalf of the Plan in connection with the Contribution, and must negotiate and approve the terms upon which the Plan will accept the LLC Interests. As also stated in the Transfer Agreement, the value of the Properties will be determined by the Independent Fiduciary based upon an appraisal of the Properties performed by the Independent Appraiser, as of the date of the Contribution.

The Plan will not pay any commissions, costs or other expenses in connection with the Contribution, including any fees that are currently charged, or any fees which are charged in the future, by the Independent Appraiser or the Independent Fiduciary.

5. In addition to the Contribution and in connection therewith, ABARTA will make a one-time, cash contribution of $500,000 to the Plan. Taken together with the appraised fair market value of the Properties underlying the LLC Interests (see Representations 18 and 19), the estimated aggregate value of the Contribution amounts to $6,900,000, and is in excess of ABARTA's 2015 minimum funding obligation under section 302 of the Act.

The Leases

6. The Plan, through the LLCs, will enter into bondable, triple-net leases (the Leases) of the Properties with each Tenant. Each Lease will be substantially identical in all respects, other than the name of the Tenant, the name of the LLC Landlord,[4] and the rent amount to be paid. Each Lease will also have an initial term of 10 years with the respective Tenant.

The bondable, triple-net lease structure will ensure that all operating costs related to the Properties, including taxes, insurance, utilities, and non-capital maintenance, repair, and capital improvements will be the responsibility of the Tenants. Additionally, the triple-net lease structure ensures that the rent payable by the Tenants to the Plan will remain payable under all circumstances, with the exception of a partial condemnation of the underlying Properties.

The Leases will remain bondable until the earlier of: (a) The date on which Property or LLC Interest is first transferred to any person or entity that is not wholly owned by the Plan; (b) the date on which the Plan sells a controlling interest in the applicable LLC to an entity that is not wholly owned by the Plan; or (c) the date the Lease or Lease Renewal terminates by operation of law.

With regard to alterations to the Properties by the Tenants, the Tenants must secure consent from the Independent Fiduciary prior to affecting any alteration which would: (a) Diminish the fair market value or remaining useful life of the Properties; (b) affect the structure or systems of any building existing on the Properties, or (c) effect an expansion of any building existing on the Properties.

Further, any amendment to a Lease or Lease Renewal must be negotiated and approved by the Independent Fiduciary. However, in no event may an amendment be inconsistent with the terms of this exemption, if granted. Finally, each Lease or Lease Renewal prohibits the Plan from transferring a fractional part of its LLC Interests to ABARTA or a Tenant.

7. Under the Pennsylvania Property Lease, Coca-Cola Lehigh Valley will pay the Plan a base rental amount of $379,441, due in equal monthly installments of $31,620. In addition, on the first day of each Lease Year from and after the second Lease Year, the base rental amount under the Pennsylvania Property Lease will be increased by an amount equal to the product of the Base Rent then in effect multiplied by a 2.0% escalator adjustment.[5] In effect, the Plan will receive an annualized 9.44% rate of return under such Lease.

Under the New York Property Lease, Coca-Cola Buffalo will pay the Plan a base rental amount of $348,563, due in equal monthly installments of $29,047.

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[4] References to the Plan as the Landlord under the Leases are meant to include the LLCs which hold title to the Properties.

[5] The annual escalator under the Pennsylvania Property Lease is based upon a market rent analysis performed by the Independent Appraiser. The Independent Fiduciary has confirmed that the rental rate under the Pennsylvania Property Lease is consistent with the fair market rental value in the Erie, Pennsylvania market.

The New York Property Lease does not provide for annual rent escalations from and after the second lease year.[6] However, it is anticipated that this Lease will generate a 13.94% annual rate of return to the Plan.

8. Over the initial 10 year term of the Leases, the Plan will receive aggregate rental income totaling $7,640,403.05 ($4,154,773.05 in aggregate income under the Pennsylvania Lease and $3,485,630.00 in aggregate income under the New York Lease).

The Applicant represents that the rental rates under the Leases represent fair market value, as (a) they were agreed upon following arm's length negotiations between the Independent Fiduciary and the Tenants, and (b) are supported by a market rent analysis performed by the Independent Appraiser.

The Lease Renewals

9. With respect to each Lease, the Tenant has the right to renew the term of the Lease for an additional Renewal Term of ten years by giving the Plan written notice (the Renewal Notice) not later than the last day of the ninth Lease year. During such time, the Plan will be represented by the Independent Fiduciary. Within 90 days of its receipt of the Tenant's Renewal Notice, the Independent Fiduciary will provide such Tenant with the Independent Fiduciary's determination of the fair market annual base rent, and the escalation factor which it desires to be applicable during the Renewal Term. The Independent Fiduciary and the Tenant will then have thirty days to agree upon a base rent amount and escalation factor for the purposes of the Renewal Term.[7] In no event, however, will the Independent Fiduciary be under any obligation to agree to a base rent for the first year of the Renewal Term which is less than the annual base rent in effect during the Lease Year immediately preceding the commencement of the Renewal Term.

The Make Whole Obligation

10. The Lease Agreements and any Lease Renewal Agreement will include a Make Whole Obligation, whereby each Tenant will ensure that the Plan receives at least a five percent annualized rate of return in connection with the Plan's ownership of the LLC Interests. After the Contribution, as of the earlier of: (i) A Sale Date; or (2) a First Calculation Date, if (A)(i) the proceeds received from the fair market value sale of a Property (or LLC interest), in the case of a sale, or (ii) the current fair market value of the Property (or the LLC interest) as of the First Calculation Date, in the case in which there has not been a sale, plus (B) any income generated by the Property during that period, less (C) any expenses attributable to the Property (or the LLC Interest) paid by the Plan during that period, is less than (D) the fair market value of such Property (or the LLC Interest) at the time of the Contribution, plus (E) an amount equal to a 5% percent rate of return on such Contributed Value during that period, compounded annually; then the Tenant must contribute an amount of cash to the Plan equal to any such difference, within 60 days of the Sale Date or First Calculation Date;

Additionally, if the Plan continues to hold a Property or LLC Interest during all or a portion of the three consecutive five year Lookback Periods that follow the First Calculation Date, with respect to any of these Lookback Periods, as of the earlier of: (1) A Sale Date; or (2) a Subsequent Calculation Date, if (A)(i) the proceeds received from the fair market value sale of a Property (or LLC interest), in the case of a sale, or (ii) the current fair market value of the LLC interest as of the applicable Subsequent Calculation Date, in the case in which there has not been a sale, plus (B) any income generated by the Property during that period, (C) less any expenses paid by the Plan during that period regarding the LLC interest or Property, is less than (D) the fair market value of such LLC Interest as of the first day of the applicable Lookback Period, plus (E) an amount equal to a 5% percent rate of return on such Contributed Value during that period, compounded annually; then the Tenant must contribute to the Plan an amount of cash equal to any such difference, within 60 days of the Sale Date or Subsequent Calculation Date; and

The Make Whole Obligation will remain in effect for up to twenty years, which is the maximum term of this proposed exemption, if granted, unless the Properties or LLC Interests are sold before then. The Independent Fiduciary will represent the interests of the Plan with respect to the Make Whole Obligation, and will ensure that the Plan receives any amount due under the Make Whole Obligation, within 60 days of the date that triggers the payment of such amount.

The Indemnification

11. The Lease Agreements provide that each Tenant reimburse the Plan, and indemnify, defend upon request, and hold harmless the Plan from any, and against all losses, penalties and court costs related to: (a) The Tenant's use, repair, management, lease, sublease, maintenance or operation of a Property; (b) any violation of any applicable environmental laws, the ADA, and other health and/or safety laws; and (c) any default by a Tenant under the Lease. Any reimbursement paid to the Plan by a Tenant in connection with the Tenant's Indemnification, will be negotiated and approved by the Independent Fiduciary.

The Right of First Offer

12. The Lease Agreements provide a Right of First Offer to the Tenants, which states that, in the event that the Plan desires to sell either a Property or an LLC Interest during the initial ten-year Lease term or during any Lease Renewal period, the Plan must first offer such Property or LLC Interest to the Tenant at terms the Plan intends to offer such Property or LLC Interest to an unrelated third party (the Unrelated Proposed Sale). Any sale of an LLC Interest or Property to ABARTA pursuant to the Right of First Offer must equal the greater of: (a) The price negotiated by the Independent Fiduciary, as between the Plan and the party that is unrelated to ABARTA; or (b) the current fair market value of the Property, as determined by the Independent Appraiser, as described herein in Representations 16–19.

If ABARTA does not purchase the Property or LLC Interest under the same terms as the terms associated with the Unrelated Proposed Sale, the Plan may sell the Property or LLC Interest to the unrelated third party within 360 days without triggering a new Right of First Offer.

During the term of the Lease and any Lease Renewal, the Independent Fiduciary is solely responsible for: (a) determining whether, when, and under what terms the Plan may prudently sell one or both of: (i) The LLC Interests; or (ii) the Properties; and (b) approving any such sale as being in the interest of, and protective of, the Plan. In addition, the Independent Fiduciary may not implement the Right of First Offer unless the Independent Fiduciary has first negotiated the terms and conditions of an Unrelated Proposed Sale.

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[6] The absence of an annual rent escalator under the New York Property Lease is based upon the Independent Appraiser's conclusion that rent escalators are not prevalent in commercial leases in the New York Property's market. The Independent Fiduciary has confirmed that the rental rate under the New York Property Lease is consistent with the fair market rental value in the Buffalo, New York market.

[7] In the event the Plan and Tenant are unable to agree upon a base rent amount and escalation factor, each will appoint an independent appraiser to determine a fair market base rent amount and escalation factor.

Legal Analysis

13. The Act prohibits a wide range of transactions involving a plan. In this regard, section 406(a)(1)(A) of the Act provides that a fiduciary with respect to a plan shall not cause a plan to engage in a transaction if the fiduciary knows or should know that such transaction constitutes a direct or indirect sale or exchange, or leasing, of any property between a plan and a party in interest. Section 406(a)(1)(B) of the Act states that a fiduciary with respect to a plan shall not cause a plan to engage in a transaction if the fiduciary knows or has reason to know that such transaction constitutes a direct or indirect extension of credit between a plan and a party in interest. Section 406(a)(1)(D) of the Act provides that a fiduciary with respect to a plan shall not cause a plan to engage in a transaction if the fiduciary knows or should know that such transaction constitutes a direct or indirect transfer to, or use by or for the benefit of, a party in interest, of any assets of the plan. Section 406(b)(1) of the Act prohibits a fiduciary from dealing with the assets of the plan in such fiduciary's own interest or for such fiduciary's personal account. Section 406(b)(2) of the Act prohibits a fiduciary from acting in such fiduciary's individual or other capacity in any transaction involving the plan on behalf of a party (or from representing a party) whose interests are adverse to the interests of the Plan, or the interests of the Plan participants and beneficiaries.

14. The term "party in interest" is defined in section 3(14)(A) and (C) of the Act to include a fiduciary with respect to a plan, and an employer, any of whose employees are covered by such Plan. In addition, section 3(14)(G) of the Act defines the term "party in interest" to include any corporation of which 50% or more of the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of such corporation is owned directly or indirectly, or held by such employer. As fiduciaries to the Plan, the Trustees are parties in interest with respect to the Plan pursuant to section 3(14)(A) of the Act. ABARTA, as an employer whose employees are covered by the Plan, and the Tenants, as wholly-owned subsidiaries of ABARTA, are parties in interest with respect to the Plan pursuant to section 3(14)(C) and (G) of the Act, respectively.

If this proposed exemption is granted, the Contribution, the Leases and the Lease Renewals would violate section 406(a)(1)(A), 406(b)(1) and (b)(2) of the Act. The Right of First Offer would violate section 406(a)(1)(A), 406(b)(1) and (b)(2) of the Act. A sale back of a Property or LLC interest by the Plan to ABARTA pursuant to the Right of First Offer would violate section 406(a)(1)(A) and (D) of the Act, as well as section 406(b)(1) and (b)(2) of the Act. In addition, the Indemnification and the Make Whole Obligation would violate section 406(a)(1)(C) of the Act, and section 406(b)(1) and (b)(2) of the Act.

15. In addition to the prohibited transaction provisions described above, sections 406(a)(1)(E) and 406(a)(2) of the Act prohibit a plan from acquiring or holding employer real property in violation of section 407(a) of the Act.[8] Section 407(a) of the Act provides that a plan may not acquire or hold employer real property unless such property is "qualifying employer real property." Section 407(d)(2) of the Act defines the term "employer real property" as real property that is leased to an employer or to an affiliate of such employer. Section 407(d)(4) of the Act defines the term "qualifying employer real property" to mean parcels of employer real property: (a) If a substantial number of the parcels are dispersed geographically; (b) if each parcel of real property and the improvements thereon are suitable (or adaptable without excessive cost) for more than one use; and (c) if the acquisition and retention of such property complies with the provisions of sections 406 and 407 of the Act. Section 407(a)(2) of the Act further prohibits a plan from acquiring or holding qualifying employer real property where "immediately after such acquisition the aggregate fair market value of employer securities and employer real property held by the plan exceeds 10% of the fair market value of the assets of the plan."

Given that: the acquisition and retention of the Properties by the Plan would not comply with the provisions of section 406 and 407 of the Act; and fair market values of the Properties immediately after acquisition would constitute approximately 18.7% of the fair market value of the Plan's assets, the Plan's acquisition and holding of the Properties would violate sections 406(a)(1)(E), 406(a)(2), and 407(a) of the Act.

The Qualified Independent Appraiser

16. The Independent Fiduciary has retained CBRE, Inc. (CBRE) to render an opinion as to the fair market value of the Properties. CBRE is a real estate appraisal firm that provides real estate financial advisory services and employs personnel with extensive experience providing valuation and appraisal services for real estate classified as warehouse/distribution.

Thomas H. Myers, Jr. and John B. Rush of CBRE's Valuation and Advisory Services prepared the appraisal report for the Pennsylvania Property (the Pennsylvania Property Appraisal Report) in November, 2014, and will update that report for purposes of this exemption, if granted. Mr. Myers is a Certified General Real Estate Appraiser in Pennsylvania and New Jersey, and an Affiliate Member of the Appraisal Institute (MAI). Mr. Myers has 43 years of relevant real estate experience, with a primary focus on major industrial properties. Mr. Rush is a Certified General Real Estate Appraiser in Delaware, New Jersey, and Pennsylvania, and has over 39 years of relevant real estate experience, including experience that encompasses a wide variety of property types including office, retail, and industrial. Mr. Rush also holds an MAI designation from the Appraisal Institute and a CRE designation from the Counselors of Real Estate.

Robert J. DiFalco and Joseph V. Ferranti of CBRE's Valuation and Advisory Services prepared an appraisal report for the New York Property (the New York Appraisal Report) in November, 2014, and will update that report for purposes of this exemption, if granted. Mr. DiFalco is a Certified General Real Estate Appraiser in New York, New Jersey, and Connecticut and an MAI.

17. As represented by CBRE, each Appraisal Report is self-contained and intended to comply with the reporting requirements set forth under Standards Rule 2–2(a) of USPAP. Additionally, CBRE represents that the intended use of the Appraisal Report is to assist the Independent Fiduciary appointed to oversee the proposed transactions to comply with its responsibilities under the Act in connection with the proposed transactions. Finally, CBRE represents that its fee for appraisal services provided in connection with the proposed transactions represents less than 0.5% of its annual revenues in 2014 and 2015, which are the years it has provided such services.

Pennsylvania Property Appraisal Report

18. In the Pennsylvania Property Appraisal Report, CBRE describes the Pennsylvania Property as a 10.615 acre parcel of land improved by a 116,751 square foot warehouse/distribution

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[8] According to the Applicant, the LLC Interests are pass-through entities, owning 100% of the underlying Properties. Therefore, the Applicant asserts that the LLC Interests are not considered securities, or for that matter, "employer securities" or "qualifying employer securities" under section 407(d)(1)or section 407(d)(5) of the Act.

facility. CBRE notes that the Property is located in the Lehigh Valley region, an area with a relatively diverse economic base which protects the region from the effects of wide swings in the economy. CBRE also notes that the Pennsylvania Property lies in Bethlehem, which is the most populous city in the Lehigh Valley, and that the long-term trends of the region should exert positive influences on the Property's value.

CBRE states that modern warehouse/distribution facilities, like the Pennsylvania Property, are a desirable commodity in the current marketplace. As explained by CBRE, this desirability is due to the general versatility of such facilities and a heightened demand for just-in-time delivery of products. CBRE also emphasizes that warehouse/distribution facilities are generally perceived to be a relatively stable asset class.

Pursuant to analysis based upon the Sales Comparison Approach and Income Capitalization Approach, CBRE concluded that the fair market value of the Pennsylvania Property was $4,400,000 as of November 7, 2014, in an appraisal report dated November 10, 2014. In addition, within its Income Capitalization analysis of the Pennsylvania Property, CBRE completed a market rent analysis and estimated that a base rental amount of $3.25 per square foot, or $379,441 per year was appropriate for the space.

New York Property Appraisal Report

19. In the New York Property Appraisal Report, CBRE describes the New York Property as a 9.05 acre parcel of land improved by two adjacent warehouse buildings which cover a combined 107,250 square feet of space. CBRE notes that the structures are in average overall condition and that there are no known factors that impact their marketability. CBRE determined that the New York Property's location in the Town of Tonawanda in Erie County, New York is suitable for the Property's current industrial use. In the Appraisal Report, CBRE notes that the New York Property's location places it in a stable industrial market, within an extensive transportation network near the United States-Canada border.

Pursuant to analysis based upon the Sales Comparison Approach and the Income Capitalization Approach, CBRE concluded that the fair market value of the New York Property was $2,500,000, as of November 3, 2014, in an Appraisal Report dated November 4, 2014. In addition, within its Income Capitalization analysis of the New York Property, CBRE completed a market rent analysis and estimated that a base rental amount of $3.25 per square foot on a triple-net basis, or $348,563 per year was appropriate for the space, as of November 4, 2014.

The Qualified Independent Fiduciary

20. For the purposes of the Covered Transactions, the Trustees have retained Evercore Trust Company (Evercore) to serve as the Independent Fiduciary for the Plan. Evercore represents that it has provided independent fiduciary services to employee benefit plans since 1987, and that it has extensive experience in making and evaluating investment decisions and with transactions implicating the prohibited transaction provisions of the Act. Evercore also represents that it has significant experience with the management and disposition of Plan assets and transactions involving real estate.

In its Engagement Letter, Evercore represents that it is independent of and unrelated to ABARTA, and that it does not directly or indirectly control, is not controlled by, and is not under common control with ABARTA. Evercore also represents that it will not directly or indirectly receive any compensation or other consideration for its own account in connection with the Covered Transactions, except for fees received in connection with its duties as Independent Fiduciary. Further, Evercore represents that its annual compensation received as Independent Fiduciary has been less than 0.5% of its annual revenues in each of the years it has been working on this engagement.

Evercore states that it will perform the following duties as Independent Fiduciary of the Plan: (a) Determine whether the Covered Transactions are in the interest of the Plan and its participants and beneficiaries; (b) negotiate the terms and conditions of the Covered Transactions on behalf of the Plan, including the Transfer Agreements, the Leases, the Lease Renewals, the Make Whole Obligation, the Indemnification, and the Right of First Offer thereunder, and other documents which Evercore, together with its legal counsel, deems necessary and in the Plan's interest to proceed with the proposed transactions; (c) determine whether and on what terms the Plan should agree to the Covered Transactions; (d) determine whether the Plan will enter into the Covered Transactions; (e) determine, together with the Independent Appraiser, the fair market value of the Properties to be contributed to the Plan, as well as the fair market rental values of the Properties under the Leases; and (e) prepare a written report for submission to the Department in connection with the exemption, if it determines that the Covered Transactions are in the interest of the Plan.

Evercore will continue to serve as Independent Fiduciary to the Plan following the Contribution of the LLC Interests to the Plan. In this regard, Evercore will: (a) Review, negotiate, and approve the terms and conditions of such Covered Transactions; (b) ensure, for purposes of the Contribution, that the Appraisal Reports of the Properties are consistent with sound principles of valuation, and that the LLC interests are valued at fair market value as of the date of the Contribution, as determined by the the Independent Appraiser; (c) review and examine all aspects of the Properties and the LLC Interests under the provisions of the Transfer Agreement, and have the right to terminate such agreement on behalf of the Plan by providing appropriate written notice to ABARTA; (d) monitor and enforce the Plan's rights and interests with respect to the Properties under the terms of the Leases, the Lease Renewals, the Make Whole Obligation, the Indemnification, and the Right of First Offer, and any other agreements regarding the Properties or the LLCs; (e) propose, negotiate, and decide whether to enter into any agreements on behalf of the Plan to amend the Leases; (f) evaluate and decide whether to grant requests for alterations to the Properties, to the extent that such alterations would: (i) Diminish the fair market value or remaining useful life of the Properties; (ii) affect the structure or systems of any building existing on the Properties, or (iii) effect an expansion of any building existing on the Properties; (g) ensure compliance with all of the terms of the Leases throughout the initial term of such Leases and throughout the duration of any renewal of such Leases; (h) arrange for appraisals of the Properties as may be necessary to satisfy the Plan's responsibilities under ERISA and the terms of this exemption; (i) manage the disposition of the Properties or the LLC Interests in connection with the Right of First Offer, and ensure that the Plan does not transfer any portion of its LLC Interests to a party in interest, such as ABARTA or the Tenants; (j) determine whether the continued ownership of the LLC Interests or the Properties is in the interests of the Plan's participants and beneficiaries and whether, when and on what terms to seek prudently to sell one or both of the LLCs or to cause the respective LLCs to sell one or both of the Properties; (k) negotiate the terms and conditions of, and consummate such sale and disposition, in the event such fiduciary determines to sell one or both of the LLCs or to cause the respective LLCs to sell or otherwise dispose of one or both Properties; and (l) monitor and enforce compliance with the conditions of this exemption, if granted.

To assist with the negotiation of the Leases and Transfer Agreements, Evercore engaged the law firms of Pillsbury Winthrop Shaw Pittman LLP (Pillsbury) and Chernow Kapustin LLC (Chernow). The fees and expenses of Evercore, as well as all fees and expenses of Pillsbury and Chernow, will be paid by ABARTA.

The Independent Fiduciary Report

21. In the preliminary Independent Fiduciary Report, Evercore concludes that the Covered Transactions are prudent and in the interest of the Plan's participants and beneficiaries. In support of this conclusion, Evercore emphasizes that the Covered Transactions will immediately improve the Plan's actuarial position, diversify the Plan's overall portfolio of assets, and reduce the Plan's reliance on future cash contributions from ABARTA.

Specifically, Evercore notes that, absent receipt by the Plan of the LLC Interests and a $500,000 cash contribution, and assuming the Plan's future receipt of required minimum contributions, the Plan's AFTAP funding percentage would be 80.54% for Plan year 2016 and 83.14% for Plan year 2017. Evercore concludes that, with the acquisition of the LLC Interests and the $500,000 cash contribution from ABARTA, the Plan's projected funding levels will improve, on a MAP–21/HAFTA basis, to 83.37% for 2016 and 85.27% for 2017.

In further support of this conclusion, Evercore asserts that the Covered Transactions will improve the diversification of the Plan's investments. Evercore emphasizes that the Plan currently holds no real estate, and that its current investments consist entirely of liquid, marketable equity and fixed income securities. Evercore explains that the Plan's ownership and leasing of the Properties to creditworthy tenants will enhance the diversification of its portfolio in view of the low correlation of returns between real estate and other asset classes, such as the equity and fixed income securities in which the Plan's assets are currently invested. Based upon its analysis of the Plan's current investments, Evercore concludes that adding real estate exposure to the Plan's asset allocation can be expected to improve the Plan's overall risk adjusted return.

Evercore asserts that the terms of the Covered Transactions, as set forth in the Transfer Agreements and Leases, are both reasonable and consistent with terms negotiated between unrelated parties in a similar arm's-length transaction. Evercore emphasizes that its own representatives, as well as expert real estate counsel were directly involved in negotiations with ABARTA regarding the terms of the Transfer Agreements and the Leases. Evercore also emphasizes that the bondable structure of the Leases is advantageous to the Plan, as it (a) provides additional assurances that rent due under the Leases will be paid to the Plan; and (b) relieves the Plan of any obligation to expend Plan assets on the Properties for any purpose, including repairs and capital improvements.

Evercore concludes that the Covered Transactions do not place any financial burden on the Tenants. Evercore notes that the annual rent of $379,441 under the Pennsylvania Property Lease represents only 12.6% of the $3.0 million average EBITDA generated by Coca-Cola Lehigh Valley, and that the annual rent of $348,563 under the New York Lease represents only 13.9% of the $2.5 million average EBITDA generated by Coca-Cola Buffalo.

Evercore concludes that the rental rates and escalator clauses under the Leases are consistent with the Independent Appraiser's determination of fair market rental value in the Properties' respective markets. In this regard, Evercore asserts that the bondable structure of the Leases make them more marketable and financeable than a standard, non-bondable lease. With respect to the New York Lease, Evercore states that the bondable lease structure serves to mitigate the absence of an escalator clause.

Finally, Evercore concludes that there is no marketability limitation attributable to the LLC Interests, other than as provided generally by applicable law. In this regard, Evercore asserts that the Right of First Offer will not impair the Plan's ability to sell the LLC Interests or the Properties at fair market value. Evercore cites to the fact that the Right of First Offer is exercisable only at either: (a) Each Property's fair market value; or (b) the value of an unsolicited offer from an unrelated party. Evercore also emphasizes that ABARTA has agreed that if it declines to exercise the Right of First Offer and the Plan proceeds with a sale to an unrelated party, the purchaser will not have any Right of First Offer obligation with respect to ABARTA.

Environmental Assessments of the Properties

22. The Independent Fiduciary retained CBRE to render a Limited Subsurface Environmental Site Assessment Reports for the Properties. CBRE conducted a Phase II Limited Subsurface Environmental Site Assessment of the Pennsylvania Property on January 5, 2015 (the Pennsylvania Assessment). To complete the Pennsylvania Assessment, CBRE engaged EnviroProbe Service, Inc., a Pennsylvania-licensed drilling contractor, to collect seven soil borings from the Pennsylvania Property. Once collected, CBRE submitted the soil samples to TestAmerica Laboratories, Inc. for an analysis of volatile organic compounds (VOCs) and semi-volatile organic compounds (SVOCs). Following its analysis, TestAmerica, Inc. concluded that no concentrations of VOCs or SVOCs were detectable at concentrations exceeding the most stringent soil standards established by the Pennsylvania Department of Environmental Protection. At the conclusion of the Pennsylvania Assessment, CBRE notes that no further assessment, remediation, or reporting to the state of Pennsylvania is recommended.

On December 29, 2014, CBRE performed a Phase I Environmental Site Assessment of the New York Property (the New York Assessment). To complete the New York Assessment, CBRE engaged Nature's Way Environmental, a New York-licensed drilling contractor, to collect five soil borings from the Pennsylvania Property. Once collected, CBRE submitted the soil samples to ESC Lab Sciences, a New York-certified laboratory, for an analysis of VOCs and SVOCs. Following its analysis, ESC Lab Sciences concluded that concentrations of both VOCs and SVOCs were well below the commercial and industrial soil cleanup objectives promulgated by the New York State Department of Environmental Conservation. At the conclusion of the New York Assessment, CBRE states that no further assessment, remediation, or reporting to the state of New York is recommended.

Statutory Findings

23. The Applicant represents that Covered Transactions are administratively feasible because they will be carried out under the supervision and direction of the Independent Fiduciary. The Applicant emphasizes that the Independent Fiduciary will represent the Plan in all aspects of the transactions, including

with respect to the Contribution of the LLC Interests, as well as all aspects of the Leases, including the ROFO and any renewal of the Leases.

The Applicant represents that the Covered Transactions are in the interest of the Plan and its participants and beneficiaries and are protective of their rights. In this regard, the Applicant emphasizes that the Contribution, which is well in excess of ABARTA's minimum required contribution amount, will significantly improve the Plan's funding status, as well as reduce the Plan's reliance on future cash contributions from ABARTA. Additionally, the Applicant emphasizes that the Plan will receive valuable, appreciating real property assets that will produce a steady stream of future income for the Plan.

24. The Applicant also represents that, in the event the exemption is denied, the Plan and its Participants will incur certain hardships. The Applicant asserts that a denial of the proposed exemption would cause the Plan to forego the benefit of a voluntary contribution that is in excess of the minimum required amount, and as such, would leave the Plan at a less-advantageous funding level. The Applicant further represents that a denial of the proposed exemption would deprive the Plan of two appreciating real property assets which produce a steady stream of reliable rental income.

Summary

25. In summary, it is represented that the Covered Transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The Independent Fiduciary will negotiate the terms and conditions of the Contribution, and approve the Contribution as being in the interest of the Plan;

(b) The LLC Interests will be contributed to the Plan at their current fair market value, as determined by the Independent Fiduciary following its review of the Appraisal Report that has been prepared by the Independent Appraiser;

(c) On the date of the Contribution, the aggregate contributed value of the LLC Interests will be no less than the current fair market value of the Properties underlying the LLC Interests, as verified by the Independent Fiduciary;

(d) On the date of the Contribution, ABARTA will contribute to the Plan a cash amount that is no less than $500,000;

(e) Immediately following the Contribution, the aggregate fair market value of employer real property and employer securities held by the Plan will represent less than 20% of the Plan's assets;

(f) As long as the Properties and/or LLC Interests are owned by the Plan, the Properties will not be altered in any way that would: (i) Diminish their fair market value or remaining useful life; (ii) affect the structure or systems of any building existing on the Properties; or (iii) affect an expansion of any building existing on the Properties, without the prior written approval of the Independent Fiduciary;

(g) Following the Contribution, the Plan will not transfer a portion of its ownership interests in the LLCs or in the Properties to a party in interest to the Plan;

(h) The Independent Fiduciary will negotiate the terms and conditions of the each Lease and Lease Renewal, and approve the Plan's entering into each Lease and Lease Renewal, as being in the interest of, and protective of, the Plan;

(i) Each Lease and Lease Renewal will remain, at all times, a bondable triple net lease, such that all costs attributable to a Property (including, among other things, taxes, insurance, utilities, and non-capital maintenance, repair, and capital improvements) are the responsibility of the Tenant, until the earlier of: (i) The date on which the Property or LLC Interest is first transferred to any person or entity that is not wholly-owned by the Plan; (ii) the date on which the Plan sells a controlling interest in the LLC to an entity that is not wholly-owned by the Plan; or (iii) the date the Lease or Lease Renewal terminates by operation of law;

(k) Any amendment to a Lease or Lease Renewal will be negotiated and approved by the Independent Fiduciary; however, in no event will any amendment be inconsistent with the terms of this exemption, if granted;

(l) For each Lease Renewal, all provisions of the Lease on which the Lease Renewal is based, with the exception of the specific rent amount and any escalator provision, will remain in effect;

(m) After the Contribution, as of the earlier of: (i) A Sale Date; or (ii) a First Calculation Date, if (A)(1) the current fair market value of a Property (or LLC interest), in the case of a sale, or (2) the current fair market value of the Property (or the LLC interest) as of the First Calculation Date, in the case in which there has not been a sale, plus (B) any income generated by the Property during that period, less (C) any expenses attributable to the Property (or the LLC Interest) paid by the Plan during that period, is less than (D) the fair market value of such Property (or the LLC Interest) at the time of the Contribution, plus (E) an amount equal to a 5% percent rate of return on such Contributed Value during that period, compounded annually; then the Tenant will contribute an amount of cash to the Plan equal to any such difference, within 60 days of the Sale Date or First Calculation Date;

(n) If the Plan continues to hold a Property or LLC Interest during all or a portion of any of the three consecutive Lookback Periods, within 60 days of the earlier of: (i) A Sale Date; or (ii) a Subsequent Calculation Date, if (A)(1) the proceeds received from the fair market value sale of a Property (or LLC interest), in the case of a sale, or (2) the current fair market value of the LLC interest as of the applicable Subsequent Calculation Date, in the case in which there has not been a sale, plus (B) any income generated by the Property during that period, (C) less any expenses paid by the Plan during that period regarding the LLC interest or Property, is less than (D) the fair market value of such LLC Interest as of the first day of the applicable Lookback Period, plus (E) an amount equal to a 5% percent rate of return on such Contributed Value during that period, compounded annually; then the Tenant will contribute to the Plan an amount of cash equal to any such difference, within 60 days of the Sale Date or Subsequent Calculation Date;

(o) The Plan will receive the full amount that the Plan may be due under the Make Whole Obligation within 60 days of the applicable Sale Date, Calculation Date, or Subsequent Calculation Date, as verified by the Independent Fiduciary;

(p) In connection with each Lease and Lease Renewal, and as set forth in writing therein, the applicable Tenant will indemnify, defend upon request, and hold the Plan harmless from any, and against all, losses, penalties and court costs related to: (i) The Tenant's use, repair, management, lease, sublease, maintenance or operation of a Property, (ii) any violation of any applicable environmental laws, the ADA, and other health and/or safety laws; and (iii) any default by the Tenant under the Lease or Lease Renewal;

(q) Any amount owed the Plan in connection with a Tenant's Indemnification of the Plan, as described in the preceding paragraph, will be negotiated and approved by the Independent Fiduciary, and will be paid to the Plan within the timeframe set forth by the Independent Fiduciary;

(r) During the term of the Lease and any Lease Renewal, the Independent Fiduciary will be solely responsible for determining whether, when, and under what terms the Plan may prudently sell one or both of: (i) The LLCs; or (ii) the Properties;

(s) During the term of the Lease and any Lease Renewal, the Independent Fiduciary will approve any sale by the Plan of one or both of: (i) The Properties; or (ii) the LLC, as being in the interest of, and protective of, the Plan;

(t) The Independent Fiduciary will not implement the Right of First Offer unless the Independent Fiduciary has first negotiated the terms and conditions of a proposed sale of an LLC Interest (or a Property) to a party that is unrelated to ABARTA or any of its affiliates;

(u) Any sale of an LLC Interest or Property to ABARTA pursuant to the Right of First Offer, will equal the greater of: (1) The price negotiated by the Independent Fiduciary, as between the Plan and the party that is unrelated to ABARTA; or (2) the current fair market value of the Property, as determined by the Independent Appraiser;

(v) If ABARTA does not purchase the Property or LLC Interest under the same terms as the terms associated with the Unrelated Proposed Sale, the Plan may sell the Property or LLC Interest to the unrelated third party within 360 days without triggering a new Right of First Offer;

(w) The Independent Fiduciary will represent the interests of the Plan for all purposes with respect to the Covered Transactions;

(x) The Independent Fiduciary will: (i) Review, negotiate and approve the terms and conditions of each Covered Transaction; (ii) review and approve the terms of the Transfer Agreement that evidences the Contribution; (iii) monitor and enforce the Plan's rights and interests with respect to the Properties; (iv) monitor ABARTA's compliance with the terms of this exemption, including all obligations set forth under the Leases; and (v) take all steps that are necessary and proper to protect the Plan in the event of any non-compliance by ABARTA;

(y) The Plan will does not pay any real estate fees, commissions, costs or other expenses in connection with the proposed transactions, including any fees that are currently charged, or any fees which accrue in the future; and

(z) The terms and conditions of the Covered Transactions will be no less favorable to the Plan than those obtainable under similar circumstances when negotiated at arm's-length with unrelated third parties.

Notice to Interested Persons

The persons who may be interested in the publication in the **Federal Register** of the Notice of Proposed Exemption (the Notice) include all individuals who are participants in the Plan. It is represented that such interested persons will be notified of the publication of the Notice by first class mail to such interested person's last known address within fifteen (15) days of publication of the Notice in the **Federal Register**. Such mailing will contain a copy of the Notice, as it appears in the **Federal Register** on the date of publication, plus a copy of the Supplemental Statement, as required, pursuant to 29 CFR 2570.43(b)(2), which will advise all interested persons of their right to comment on and/or to request a hearing. All written comments or hearing requests must be received by the Department from interested persons within 45 days of the publication of this proposed exemption in the **Federal Register**.

All comments will be made available to the public. *Warning:* Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Brennan of the Department at (202) 693–8456. (This is not a toll-free number.)

Sears Holdings 401(k) Savings Plan (the Savings Plan) and the Sears Holdings Puerto Rico Savings Plan (the PR Plan) (collectively, the Plans), Located in Hoffman Estates, IL

[Exemption Application Nos. D–11846 and D–11847]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA or the Act), and section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code), and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).

Section I. Transactions

(a) If the proposed exemption is granted, the restrictions of sections 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a)(1)(A) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(E) of the Code,[9] shall not apply to the acquisition and holding by the Savings Plan of certain subscription rights (the Rights) to purchase shares of common stock (the SC Stock) in Sears Canada Inc. (Sears Canada) in connection with an offering (the Offering) by Sears Holdings Corporation (Holdings) of shares of SC Stock, provided that the conditions as set forth, below, in Section II of this proposed exemption were satisfied for the duration of the acquisition and holding; and

(b) If the proposed exemption is granted, the restrictions of sections 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a)(1)(A) of the Act[10] shall not apply to the acquisition and holding of the Rights by the PR Plan in connection with the Offering of the SC Stock by Holdings, provided that the conditions as set forth in Section II of this proposed exemption were satisfied for the duration of the acquisition and holding.

Section II. Conditions

(a) The receipt of the Rights by the Plans occurred in connection with the Offering, in which all shareholders of the common stock of Holdings (Holdings Stock), including the Plans, were treated in the same manner;

(b) The acquisition of the Rights by the Plans resulted from an independent act of Holdings, as a corporate entity;

(c) Each shareholder of Holdings Stock, including each of the Plans, received the same proportionate number of Rights based on the number of shares of Holdings Stock held by each such shareholder;

(d) All decisions with regard to the holding and disposition of the Rights by the Plans were made by a qualified independent fiduciary (the Independent Fiduciary) within the meaning of 29 CFR 2570.31(j);[11]

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[9] For purposes of this proposed exemption, unless indicated otherwise, references to section 406 of the Act should be read to refer as well to the corresponding provisions of section 4975 of the Code.

[10] The Applicant represents that there is no jurisdiction under Title II of the Act with respect to the PR Plan. Accordingly, the Department is not providing any exemptive relief from section 4975(c)(1)(E) of the Code for the acquisition and holding of the Rights by the PR Plan.

[11] 29 CFR 2570.31(j) defines a "qualified independent fiduciary," in relevant part, to mean "any individual or entity with appropriate training, experience, and facilities to act on behalf of the plan regarding the exemption transaction in accordance with the fiduciary duties and responsibilities prescribed by ERISA, that is

Continued

(e) The Independent Fiduciary determined that it would be in the interest of the Plans to sell all of the Rights received in the Offering by the Plans in blind transactions on the NASDAQ Global Select Market;

(f) No brokerage fees, commissions, subscription fees, or other charges were paid by the Plans with respect to the acquisition and holding of the Rights, or were paid to any affiliate of Holdings, Sears Canada, or the Independent Fiduciary, with respect to the sale of the Rights.

Section III. Definitions

(a) The term "affiliate" of a person includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with such person;

(2) Any officer, director, partner, employee, or relative, as defined in section 3(15) of the Act, of such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(c) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

Effective Date: This proposed exemption, if granted, will be effective for the period beginning October 16, 2014, and ending November 7, 2014 (the Offering Period).

Summary of Facts and Representations

Background

1. Sears Holdings Corporation (Holdings), is the parent company of Kmart and Sears, Roebuck, & Co. (Sears Roebuck). Holdings was formed as a Delaware corporation in 2004 in connection with the merger of Kmart and Sears Roebuck on March 24, 2005. In August 2014, Sears Holdings operated a national network of stores with 1,870 full-line and specialty retail stores in the United States operating through Kmart and Sears Roebuck as well as full-line and specialty retail stores in Canada operating through Sears Canada, Inc. (Sears Canada). As of October 15, 2015, Holdings owned approximately 51% of Sears Canada.

2. Common stock issued by Holdings (Holdings Stock), par value $0.01 per share, is publicly-traded on the NASDAQ Global Select market under the symbol, "SHLD." As of October 16, 2014, there were 12,293 shareholders of record and approximately 106,484,024 shares of Holdings Stock issued and outstanding.

ESL Investments, Inc. and its affiliates (ESL), including Edward S. Lampert (Mr. Lampert) owned approximately 48.5 percent of the Holdings Stock, issued and outstanding, as of October 16, 2014. Mr. Lampert is the Chairman of the Board of Directors and Chief Executive Officer of Holdings. He is also the Chairman and Chief Executive Officer of ESL.

3. Holdings and certain of its affiliates sponsor the Sears Holdings Savings Plan (the Savings Plan) and the Sears Holdings Puerto Rico Savings Plan (the PR Plan) (collectively the Plans). Each Plan is a participant-directed account plan that permits participants to invest in equity, fixed income, balanced funds, and an investment fund (the Stock Fund) comprised of Holdings Stock. The Plans are designed and operated to comply with the requirements of section 404(c) of the Act. The Savings Plan and the PR Plan assets are held together within the Sears Holdings 401(k) Savings Plan Master Trust (the Master Trust), which also holds the Stock Fund and consequently, shares of Holdings Stock.[12] The Plans' participants, therefore, indirectly own shares of Holdings Stock, through investments in the Stock Fund.

4. Sears Roebuck and all of its wholly-owned (direct and indirect) subsidiaries and Sears Holdings Management Corporation (SHMC), a wholly-owned subsidiary of Holdings, with respect to certain employees, have adopted the Savings Plan and are employers under that Plan.

As of October 16, 2014 (the Record Date), there were 60,260 participants in the Savings Plan, and the Savings Plan's share of the total assets of the Master Trust was $2,825,371,014. Also, as of the Record Date, the Savings Plan's allocable share of the Holdings Stock held in the Stock Fund under the Master Trust was 1,515,803 shares, and the approximate percentage of the fair market value of the total assets of the Savings Plan invested in Holdings Stock was two percent, which amount constituted approximately one percent of the 106 million shares of Holdings Stock issued and outstanding.

The Savings Plan is administered by the Sears Holding Corporation Administrative Committee (the Administrative Committee), whose members are officers and/or employees of SHMC. The Sears Holdings Corporation Investment Committee (the Investment Committee), whose members are officers and/or employees of SHMC, has authority over decisions relating to the investment of the Savings Plan's assets.

5. The PR Plan was established by Holdings for employees of Sears Roebuck de Puerto Rico (Sears Roebuck PR) who reside in the Commonwealth of Puerto Rico. The Applicant represents that the fiduciaries of the PR Plan have not made an election under section 1022(i)(2) of the Act, whereby such plan would be treated as a trust created and organized in the United States for purposes of tax qualification under section 401(a) of the Code. Therefore, according to the Applicant, there is no jurisdiction under Title II of the Act. There is, however, jurisdiction under Title I of the Act.

As of December 31, 2014, there were 7,550 participants in the PR Plan. As of the Record Date there were 1,765 participants in the PR Plan with account balances, and the PR Plan's share of the total assets of the Master Trust was $17,023,422. Also, as of the Record Date, the PR Plan's allocable share of the Holdings Stock held in the Stock Fund under the Master Trust was 46,880 shares, and the approximate percentage of the fair market value of the total assets of the PR Plan invested in Holdings Stock was eight percent, which amount constituted less than one tenth of one percent of the 106 million shares of Holdings Stock issued and outstanding.

The PR Plan is administered by the Administrative Committee, and the Investment Committee makes investment decisions for the PR Plan. Banco Popular de Puerto Rico serves as the trustee of the PR Plan.

Sears Canada

6. Sears Canada was incorporated in Canada in 1952 and its headquarters are in Toronto, Ontario. It is a multi-format retailer and, as of October 14, 2014, had a total network of 113 full-line department stores, 307 specialty stores, 1,378 catalogue merchandise pick-up locations, and 96 Sears Travel offices.

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independent of and unrelated to any party in interest engaging in the exemption transaction and its affiliates;" in general, a fiduciary is presumed to be independent "if the revenues it receives or is projected to receive, within the current federal income tax year from parties in interest (and their affiliates) [with respect] to the transaction are not more than 2% of such fiduciary's annual revenues based upon its prior income tax year. Although the presumption does not apply when the aforementioned percentage exceeds 2%, a fiduciary nonetheless may be considered independent based upon other facts and circumstances provided that it receives or is projected to receive revenues that are not more than 5% within the current federal income tax year from parties in interest (and their affiliates) [with respect] to the transaction based upon its prior income tax year."

[12] State Street Bank and Trust Company serves as the master trustee and custodian for the Master Trust.

As of October 16, 2014, approximately 51% of SC Stock was held by Holdings. Prior to the Offering, SC Stock traded on the Canadian Toronto Stock Exchange (TSX) under the symbol "SCC" and, as of October 8, 2014, it was also listed and trading on the U.S. NASDAQ under the symbol "SRSC."

The Offering

7. On October 2, 2014, Holdings announced its intent to conduct a rights offering to shareholders (the Offering) as a means of disposing of a non-core asset (its Sears Canada holdings) and raising substantial cash proceeds for Holdings. Furthermore, in the opinion of Holdings, the Offering gave shareholders of Holdings Stock the ability to avoid dilution by retaining their ownership percentage in Holdings and in Sears Canada. On October 15, 2014, Holdings issued the final prospectus describing the Offering to shareholders of record, including the Plans, as of the Record Date.

Under the terms of the Offering, on October 16, 2014, all shareholders of record of Holdings Stock, including the Plans, automatically received one Right for each whole share of Holdings Stock held by each such shareholder. The Applicant represents that the Master Trust (the Trust) acquired 1,562,683 Rights through the Offering.

8. Each Right permitted the holder thereof to purchase 0.375643 shares of SC Stock from Holdings at a subscription price of $9.50 per whole share.[13] Each Right also contained an over-subscription privilege permitting the holder to subscribe for additional shares of SC Stock, up to the number of shares of SC Stock that were not subscribed for by the other holders of the Rights. The Plans were not eligible to participate in the over-subscription privilege because a qualified, independent fiduciary acting on behalf of the Plans, sold the Rights received by the Plans, as discussed more fully below.

9. All shareholders of Holdings Stock held the Rights until such Rights expired, were exercised, or were sold. With regard to the exercise of the Rights, the Applicant represents that the Rights could only be exercised in whole numbers. Each shareholder of Holdings Stock needed to have at least three Rights to purchase a share of SC Stock, because only whole shares could be purchased by the exercise of the Rights. Fractional shares or cash in lieu of fractional shares were not issued in connection with the Offering.

10. With regard to the sale of the Rights, the Applicant represents that the Rights were transferable. Further, the Applicant represents that the Rights were traded on the NASDAQ Global Select Market under the symbol, "SHLDR." The allocation of the Rights to shareholders was handled by Depository Trust Company (DTC). The Applicant represents that the public trading of Rights (the Trading Period) began on October 16, 2014, and continued until the close of business on November 4, 2014, the third business day prior to the close of the Offering. The Applicant further represents that this deadline applied uniformly to all holders of the Rights.

11. While the Plans generally permit participants to direct the investment of their own accounts, including their investments in Holdings Stock, all decisions regarding the holding and disposition of the Rights by each Plan were made, in accordance with the Plan provisions, by a qualified independent fiduciary acting solely in the interest of Plan participants.[14] Participants in the Plans who were invested in Holdings Stock as of the Record Date were notified of the Offering, the engagement of the independent fiduciary, the fact that the Rights would be held in the Stock Fund, that the independent fiduciary would determine whether the Rights should be exercised or sold, and the means by which a participant could obtain more information. Holdings also communicated generally with employees regarding the Offering and with the public through public releases at *www.searsholdings.com.*

12. The Offering closed at 5 p.m. eastern standard time on November 7, 2014. The Applicant represents that 40,000,000 shares of SC Stock were subscribed for by shareholders or their transferees at a price of $9.50 per whole share. During the Trading Period, the price of the SC Stock on the NASDAQ ranged from $9.06 to $10.00 with a volume-weighted average price (VWAP) of $9.75.

Following the Offering, Holdings' interest in Sears Canada was reduced to approximately 11.7 percent. Accordingly, the Applicant states that following the closing of the Offering, Sears Canada became independent of Holdings. The Applicant represents that the gross proceeds payable to and received by Holdings from the sale of the SC Stock pursuant to the Offering, net of any selling expenses, was approximately $380 million.

The Independent Fiduciary

13. Fiduciary Counselors Inc. (FCI) was retained by the Investment Committee pursuant to an agreement (the Agreement), dated October 16, 2014, to act as the independent fiduciary on behalf of the Plans, in connection with the Offering and an exemption application. Pursuant to the terms of the Agreement, FCI's responsibilities were to determine whether or not and when to exercise or sell the Rights received by each Plan in the Offering.[15]

The Applicant represents that hiring an independent fiduciary to manage the holding and disposition of the Rights was appropriate in this case for the following reasons: (i) There would have been a significant cost to developing and implementing a process under each Plan to administer a pass-through of the Rights to participants; (ii) It was not practicable to initiate and implement a pass-through of the Rights to participants given the limited notice provided to shareholders of the Offering and the short subscription period (16 days), because such process would have included establishment of a "rights fund" and a Sears Canada fund within each Plan, the design and testing of procedures for allocating the Rights among participant accounts, soliciting participant directions on the exercise or sale of the Rights and identifying the source of funding (*e.g.*, which investment account is to be liquidated) for each participant who chose to exercise the Rights, and the short Offering period meant that there would have been insufficient time to adequately educate participants regarding their rights and obligations; (iii) There would have been a loss of value that participants might otherwise have gained, because participants' unfamiliarity with rights offerings as well as general participant inertia would have resulted in a significant percentage of participants allowing their Rights to expire without selling or exercising them; (iv) It was not in the interest of participants to require the Plans to offer and hold for participant investment a single stock (SC Stock) that had not been selected by the plan fiduciary as an investment option appropriate for the Plan; and (v) The Rights are most appropriately viewed as a non-cash dividend payable to owners of Holdings Stock such as the Plans, so that the fiduciary of the Stock Fund is the appropriate person to manage the "proceeds" of the Plans' investment in Holdings Stock. The Applicant represents that, in this case, the independent fiduciary appointed to manage the Rights took responsibility for realizing the value in the Rights by selling them. The cash proceeds of that sale were then reinvested in Holdings Stock pursuant to the terms of the plan.

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[13] The subscription price was determined by Holdings and is the U.S. dollar equivalent of the closing price of Sears Canada Stock on the TSX on September 26, 2014, the last trading day before Holdings requested Sears Canada's cooperation with the filing of a prospectus qualifying the shares deliverable upon exercise of the Rights.

[14] Each of the Plans was amended to: (i) Permit the Plan to temporarily acquire and hold the Rights (and any Sears Canada stock acquired through the exercise of the Rights) pending their orderly disposition; (ii) confirm that participants were not entitled to direct the holding, exercise, sale, or other disposition of the Rights received by the Plan; and (iii) authorize the designated independent fiduciary to exercise discretionary authority with respect to the holding, exercise, sale, or other disposition of the Rights and any shares of Sears Canada stock acquired through the exercise of the Rights.

[15] Because the Rights were automatically issued to all shareholders including the Plans and there was no option to decline them, the independent fiduciary was not asked to determine whether the Plans should acquire the Rights.

The Applicant represents that FCI is qualified to serve as the independent fiduciary for the Plans in connection with the Offering, because FCI is a registered investment adviser under the Investment Advisers Act of 1940, and FCI is an independent company whose primary focus is providing independent fiduciary services for employee benefit plans. FCI has served as an independent fiduciary to employee benefit plans since 2001.

In its "Report of Independent Fiduciary Regarding Sears Canada Rights Offering," dated February 23, 2015 (The IF Report), FCI represents and warrants that it is independent and unrelated to Holdings. FCI further represents that it did not directly or indirectly receive any compensation or other consideration for its own account in connection with the Offering, except compensation from Holdings for performing services described in the Agreement. The percentage of FCI's 2014 revenue derived from any party in interest involved in the subject transaction or its affiliates was less than five percent of FCI's 2013 revenue.

FCI represents further that it understands and acknowledges its duties and responsibilities under the Act in acting as a fiduciary on behalf of the Plans in connection with the Offering. In the IF Report, FCI represents that it conducted a due diligence process in evaluating the Offering on behalf of the Plans. This process included numerous discussions and correspondence with representatives of the Plans and Holdings, Holdings' counsel, broker-dealers and representatives of the Plans' trustee enabling FCI to better understand a number of important elements related to the Offering. In addition, FCI reviewed publicly available information and information provided by Holdings.

As detailed in the IF Report, with regard to the Offering, FCI considered the following four options: (i) Continue holding the Rights within the Stock Fund; (ii) Exercising all of the Rights and acquiring SC Stock; (iii) Selling a portion of the Rights and using the proceeds to exercise the remaining Rights to acquire SC Stock; or (iv) Selling all of the Rights on the NASDAQ Global Select Market at the prevailing market price. Acting as the independent fiduciary on behalf of the Plans, FCI chose to sell all of the Rights on the NASDAQ Global Select Market.

In determining to sell all of the Plans' Rights, FCI represents that the proceeds from the sale would be invested in Holdings Stock, as per the governing documents of the Stock Fund. As described in the IF Report, FCI determined that the benefits of selling the Rights included simplicity, lower transaction costs, and less exposure to risk than the options that involved exercising any of the Rights. According to FCI, this option allowed the Plans to realize the benefits of the Rights in a timely manner while maintaining maximum exposure to shares of Sears Holdings within the Stock Fund, consistent with the purpose of the Stock Fund. FCI understood that the Plans would incur some transactions costs through this option, estimated at $0.015 to $0.05 per Right traded. Accordingly, FCI concluded that this sale of the Rights was in the interest of the Plans and the Plans' participants and beneficiaries and was protective of such participants and beneficiaries of the Plans.

14. The Trading Period ended on November 4, 2014. According to the IF Report, over the sixteen-day period that the Rights traded on the NASDAQ, the volume-weighted average price for the 58,546,218 Rights traded was $0.1239 according to data reported by Bloomberg. The IF Report provides that FCI completed the sale of the Plans' 1,562,683 Rights in blind transactions on the NASDAQ Global Select Market between October 22 and October 31, 2014, realizing an average selling price of $0.1333 per Right.

According to the Applicant, as a result of the Rights sale, the total net proceeds generated for the Savings Plan and the PR Plan was $200,557.36. These proceeds were credited to each Plan and the unit value of each participant's account balance reflected the addition of assets credited to the Plan.

15. The Applicant represents that no brokerage fees, commissions, subscription fees, or other charges were paid by the Plans with respect to the acquisition and holding of the Rights, or were paid to any broker affiliated with FCI, Holdings, or Sears Canada in connection with the sale of the Rights. In this regard, FCI represents that it selected State Street Global Markets as the broker for the sale of the Plans' Rights, based on FCI's confidence in the broker's execution ability and an attractive fee schedule of 0.005 cents per Right traded. In connection with the sale of the Rights, the Plans paid $7,813.42 in commissions to independent, third parties and $4.66 in SEC fees.

Requested Relief

16. The Applicant represents that the subject transactions have already been consummated. In this regard, the Plans acquired the Rights pursuant to the Offering, and held such Rights until the Rights were sold by the independent fiduciary. The Applicant states that, because there was insufficient time between the dates when the Plans acquired the Rights and when such Rights were sold, to apply for and be granted an exemption, Holdings was required to request retroactive relief, effective as of October 16, 2014, the Record Date.

17. Section 406(a)(1)(E) of the Act prohibits a fiduciary from causing a plan to engage in a transaction, if he knows or should know that such transaction constitutes a direct or indirect acquisition, on behalf of a plan, of any employer security or employer real property in violation of section 407(a). Section 406(a)(2) of the Act prohibits a fiduciary who has authority or discretion to control or manage the assets of a plan from permitting a plan to hold any employer security or employer real property if he knows or should know that holding such security or real property violates section 407(a). The Applicant represents that because the Rights are non-qualifying employer securities, the acquisition and holding of the Rights violated sections 406(a)(1)(E), 406(a)(2), and 407(a) of the Act.

Furthermore, section 406(b)(1) of the Act prohibits a fiduciary from dealing with the assets of a plan in his own interest or for his own account. Section 406(b)(2) of the Act prohibits a fiduciary, in his individual or in any other capacity, from acting in any transaction involving the plan on behalf of a party (or representing a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries. The Applicant states that, although Holdings retained an independent fiduciary to represent the Plans in connection with the disposition of the Rights, by causing the participation of the Plans in the Offering, Holdings may have dealt with the assets of the Plans for its own account, and also may have acted in a transaction on behalf of itself and the Plans.

Therefore, the Applicant requests an administrative exemption from sections 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a)(1)(A) of the Act and section 4975 of the Code by reason of 4975(c)(1)(E) of the Code, with regard to the Savings Plan, and from sections 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a)(1)(A) of the Act with regard to the PR Plan.[16]

Statutory Findings

18. The Applicant represents that the requested exemption is administratively feasible because the acquisition, holding, and sale of the Rights by the Plans was a one-time transaction which will not require continued monitoring or other involvement by the Department.

19. The Applicant represents that the transactions which are the subject of this proposed exemption are in the interest of the Plans, because the Rights were automatically issued at no cost to all shareholders of Holdings Stock as of a specified Record Date, including the Plans. The Plans were then able to realize value through their sale.

20. The Applicant represents that the transactions were protective of the Plans and their respective participants and beneficiaries, as the Plans obtained the Rights as a result of an independent act of Holdings as a corporate entity. In addition, the acquisition of the Rights by the Plans occurred on the same terms made available to other holders of Holdings Stock and the Plans received the same proportionate number of Rights as other owners of Holdings Stock. The Plans were also protected in that all decisions regarding the holding and disposition of the Rights by the Plans were made, in accordance with Plan provisions, by the independent fiduciary. Furthermore, the independent fiduciary determined that it would be in the interest of the Plans to sell all of the Rights received in the Offering by the Plans in blind transactions on the NASDAQ Global Select Market.

Summary

21. In summary, the Applicant represents that the proposed exemption satisfies the statutory criteria for an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code for the reasons stated above and for the following reasons:

(a) The receipt of the Rights by the Plans occurred in connection with the Offering, in which all shareholders of Holdings Stock, including the Plans, were treated in the same manner;

(b) The acquisition of the Rights by the Plans resulted from an independent act of Holdings, as a corporate entity, and without any participation on the part of the Plans;

(c) Each shareholder of Holdings Stock, including each of the Plans, received the same proportionate number of Rights based on the number of shares of Holdings Stock held by each such shareholder;

(d) All decisions with regard to the holding and disposition of the Rights by the Plans were made by a qualified, independent fiduciary within the meaning of 29 CFR 2570.31(j);

(e) The independent fiduciary determined that it would be in the interest of the Plans to sell all of the Rights received in the Offering by the Plans in blind transactions on the NASDAQ Global Select Market; and

(f) No brokerage fees, commissions, subscription fees, or other charges were paid by the Plans with respect to the acquisition and holding of the Rights, or were paid to any affiliate of Holdings, Sears Canada, or the independent fiduciary with respect to the sale of the Rights.

Notice to Interested Persons

Notice of the proposed exemption will be given to all interested persons within 22 days of the publication of the notice of proposed exemption in the **Federal Register**, by first class U.S. mail to the last known address of all such individuals. Such notice will contain a copy of the notice of proposed exemption, as published in the **Federal Register**, and a supplemental statement, as required pursuant to 29 CFR 2570.43(a)(2). The supplemental statement will inform interested persons of their right to comment on and to request a hearing with respect to the pending exemption. Written comments and hearing requests are due within 52 days of the publication of the notice of proposed exemption in the **Federal Register**. All comments will be made available to the public.

Warning: If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

FOR FURTHER INFORMATION CONTACT: Scott Ness of the Department, telephone (202) 693–8561. (This is not a toll-free number.)

Sears Holdings 401(k) Savings Plan (the Savings Plan) and the Sears Holdings Puerto Rico Savings Plan (the PR Plan) (collectively, the Plans), Located in Hoffman Estates, IL

[Exemption Application Nos. D–11851 and D–11852]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA or the Act), and section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code), and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).

Section I. Transactions

(a) The restrictions of sections 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a)(1)(A) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(E) of the Code,[17] shall not apply to the acquisition and holding of certain subscription rights (the Rights) issued by Sears Holdings Corporation (Holdings) by the Savings Plan in connection with an offering (the Offering) by Holdings of unsecured obligations issued by Holdings (Notes) and warrants to purchase the common stock of Holdings (Warrants)(together referred to as Units), provided that the conditions as set forth, below, in Section II of this proposed exemption were satisfied for the duration of the acquisition and holding; and

(b) The restrictions of sections 406(a)(1)(E), 406(a)(2), 406(b)(1),

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[16] The Applicant represents that there is no jurisdiction under Title II of the Act with respect to the PR Plan. Accordingly, the Department is not providing any exemptive relief from section 4975(c)(1)(E) of the Code for the acquisition and holding of the Rights by the PR Plan.

[17] For purposes of this proposed exemption, unless indicated otherwise, references to section 406 of the Act should be read to refer as well to the corresponding provisions of section 4975 of the Code.

406(b)(2), and 407(a)(1)(A) of the Act[18] shall not apply to the acquisition and holding of the Rights by the PR Plan in connection with the Offering by Holdings, provided that the conditions as set forth in Section II of this proposed exemption were satisfied for the duration of the acquisition and holding.

Section II. Conditions

(a) The receipt of the Rights by the Plans occurred in connection with the Offering, in which all shareholders of the common stock of Holdings (Holdings Stock), including the Plans, were treated in the same manner;

(b) The acquisition of the Rights by the Plans resulted from an independent act of Holdings, as a corporate entity;

(c) Each shareholder of Holdings Stock, including each of the Plans, received the same proportionate number of Rights based on the number of shares of Holdings Stock held by each such shareholder;

(d) All decisions with regard to the holding and disposition of the Rights by the Plans were made by a qualified independent fiduciary (the Independent Fiduciary) within the meaning of 29 CFR 2570.31(j);

(e) The Independent Fiduciary determined that it would be in the interest of the Plans to sell all of the Rights received in the Offering by the Plans in blind transactions on the NASDAQ Global Select Market;

(f) No brokerage fees, commissions, subscription fees, or other charges were paid by the Plans with respect to the acquisition and holding of the Rights, or were paid to any affiliate of Holdings or the Independent Fiduciary in connection with the sale of the Rights.

Section III. Definitions

(a) The term "affiliate" of a person includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with such person;

(2) Any officer, director, partner, employee, or relative, as defined in section 3(15) of the Act, of such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(c) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

Effective Date: This proposed exemption, if granted, will be effective for the period beginning October 30, 2014, and ending November 18, 2014 (the Offering Period).

Summary of Facts and Representations

Background

1. Sears Holdings Corporation (Holdings), is the parent company of Kmart and Sears, Roebuck, & Co. (Sears Roebuck). Holdings was formed as a Delaware corporation in 2004 in connection with the merger of Kmart and Sears Roebuck on March 24, 2005. By August 2014, Holdings operated a national network of stores with 1,870 full-line and specialty retail stores in the United States operating through Kmart and Sears Roebuck. In October 2014, Holdings completed the spin-off of a substantial portion of Sears Canada, Inc., which allowed it to dispose of a non-core asset and raise substantial cash proceeds.

2. Common stock issued by Holdings (Holdings Stock), par value $0.01 per share, is publicly-traded on the NASDAQ Global Select market under the symbol, "SHLD." As of October 30, 2014, there were 12,236 shareholders of record and approximately 106.5 million shares of Holdings Stock issued and outstanding.

3. ESL Investments, Inc. and its affiliates (ESL), including Edward S. Lampert (Mr. Lampert) owned approximately 48.5 percent of the Holdings Stock, issued and outstanding, as of October 30, 2014. Mr. Lampert is the Chairman of the Board of Directors and Chief Executive Officer of Holdings. He is also the Chairman and Chief Executive Officer of ESL.

4. Holdings and certain of its affiliates sponsor the Sears Holdings 401(k) Savings Plan (the Savings Plan) and the Sears Holdings Puerto Rico Savings Plan (the PR Plan) (collectively the Plans). Each Plan is a participant-directed account plan that permits participants to invest in equity, fixed income, balanced funds, and an investment fund (the Stock Fund) comprised of Holdings Stock. The Plans are designed and operated to comply with the requirements of section 404(c) of the Act. The Savings Plan and the PR Plan assets are held together within the Sears Holdings 401(k) Savings Plan Master Trust (the Master Trust), which also holds the Stock Fund and consequently, shares of Holdings Stock.[19] The Plans' participants, therefore, indirectly own shares of Holdings Stock through investments in the Stock Fund.

5. Sears Roebuck and all of its wholly-owned (direct and indirect) subsidiaries and Sears Holdings Management Corporation (SHMC), a wholly-owned subsidiary of Holdings, with respect to certain employees, have adopted the Savings Plan and are employers under that Plan.

6. As of October 30, 2014 (the Record Date), there were 60,260 participants in the Savings Plan, and the Savings Plan's share of the total assets of the Master Trust was approximately $2.95 billion. Also, as of the Record Date, the Savings Plan's allocable share of the Holdings Stock held in the Stock Fund under the Master Trust was 1,411,133 shares, and the approximate percentage of the fair market value of the total assets of the Savings Plan invested in Holdings Stock was 1.79 percent, which amount constituted approximately one percent of the 106.5 million shares of Holdings Stock issued and outstanding.

7. The Savings Plan is administered by the Sears Holding Corporation Administrative Committee (the Administrative Committee), whose members are officers and/or employees of SHMC. The Sears Holdings Corporation Investment Committee (the Investment Committee), whose members are officers and/or employees of SHMC, has authority over decisions relating to the investment of the Savings Plan's assets.

8. The PR Plan was established by Holdings for employees of Sears Roebuck de Puerto Rico (Sears Roebuck PR) who reside in the Commonwealth of Puerto Rico. The Applicant represents that the fiduciaries of the PR Plan have not made an election under section 1022(i)(2) of the Act, whereby such plan would be treated as a trust created and organized in the United States for purposes of tax qualification under section 401(a) of the Code. Therefore, according to the Applicant, there is no jurisdiction under Title II of the Act. There is, however, jurisdiction under Title I of the Act.

9. As of December 31, 2014, there were 7550 participants in the PR Plan. As of the Record Date, there were 1,766 participants with account balances, and the PR Plan's share of the total assets of the Master Trust was $17,859,181.57. Also, as of the Record Date, the PR Plan's allocable share of the Holdings Stock held in the Stock Fund under the Master Trust was 40,650 shares, and the approximate percentage of the fair

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[18] The Applicant represents that there is no jurisdiction under Title II of the Act with respect to the PR Plan. Accordingly, the Department is not providing any exemptive relief from section 4975(c)(1)(E) of the Code for the acquisition and holding of the Rights by the PR Plan.

[19] State Street Bank and Trust Company serves as the master trustee and custodian for the Master Trust. As of October 30, 2014, the Master Trust had approximately $2.95 billion in total assets. As of October 30, 2014, the Stock Fund within the Master Trust held 1,451,783 shares of Holdings Stock with a fair market value of $53,338,507.40.

market value of the total assets of the PR Plan invested in Holdings Stock was 8.36 percent, which amount constituted 0.04 percent of the 106.5 million shares of Holdings Stock issued and outstanding.

10. The PR Plan is administered by the Administrative Committee, and the Investment Committee makes investment decisions for the PR Plan. Banco Popular de Puerto Rico serves as the trustee of the PR Plan.

The Offering

11. By late October 2014, Holdings had reduced its stake in Sears Canada, Inc. and raised significant cash through a rights offering. On October 20, 2014, Holdings announced its intent to conduct an additional rights offering to shareholders (the Offering) as a means of further evolving Holdings' capital structure and enhancing its financial flexibility. On October 20, 2014, Holdings issued a prospectus describing the Offering to shareholders of record, including the Plans, as of the Record Date. The prospectus was supplemented on October 30, 2014.

12. Under the terms of the Offering, on October 30, 2014, each shareholder of record of Holdings Stock, including the Plans, automatically received one (1) Right for every 85.1872 shares of Holdings Stock held by such shareholder. The Applicant represents that only whole Rights were distributed to shareholders, including the Plans, and the Master Trust acquired 17,189 Rights through the Offering. The allocation of the Rights to shareholders was handled by Depository Trust Company.

13. Each Right permitted the holder thereof to purchase for $500, one "Unit," consisting of (a) a note issued by Holdings in the principal amount of $500 (Note),[20] and (b) 17.5994 warrants (Warrants), each entitling the holder to purchase one share of Holdings Stock.[21] Each Right also contained an over-subscription privilege permitting the holder to subscribe for additional Units, up to the number of Units that were not subscribed for by the other holders of the Rights. The Plans were not eligible to participate in the over-subscription privilege because a qualified, independent fiduciary acting on behalf of the Plans, sold the Rights received by the Plans, as discussed more fully below.

14. All shareholders of Holdings Stock held the Rights until such Rights expired, were exercised, or were sold. With regard to the exercise of the Rights, the Applicant represents that the Rights could only be exercised in whole numbers. Furthermore, each shareholder of Holdings Stock needed to have at least eighty-six Rights to purchase a Unit, because only whole Units could be purchased through the exercise of the Rights. Fractional Units or cash in lieu of fractional Units were not issued in connection with the Offering.

15. With regard to the sale of the Rights, the Applicant represents that the Rights were transferable and that they traded on the NASDAQ Global Select Market under the symbol "SHLDZ." The Applicant represents that the public trading of Rights (the Trading Period) began on or around October 31, 2014, and continued until the close of business on November 13, 2014, the third business day prior to the close of the Offering. The Applicant further represents that this deadline applied uniformly to all holders of the Rights.

16. While the Plans generally permit participants to direct the investment of their own accounts, including their investments in Holdings Stock, all decisions regarding the holding and disposition of the Rights by each Plan were made, in accordance with the Plan provisions, by a qualified independent fiduciary acting solely in the interest of Plan participants.[22] Participants in the Plans who were invested in Holdings Stock as of the Record Date were notified of the Offering, the engagement of the independent fiduciary, the fact that the Rights would be held in the Stock Fund, that the independent fiduciary would determine whether the Rights should be exercised or sold, and the means by which a participant could obtain more information. Holdings also communicated generally with employees regarding the Offering and with the public through public releases at *www.searsholdings.com*.

17. The Offering expired at 5 p.m. eastern standard time on November 18, 2014. The Applicant represents that Holdings issued 1,250,000 Units, including $625 million aggregated principal amount of Notes and Warrants to purchase 21,999,296 shares of Holdings Stock. Over the 10-day period that the Rights traded on the Nasdaq, the volume weighted average price per Right for the 751,041 Rights traded was $201.1554, according to data reported by Bloomberg. The Applicant represents that the gross proceeds payable to and received by Holdings from the sale of the Units pursuant to the Offering, net of any selling expenses, was approximately $625 million.

The Independent Fiduciary

18. Fiduciary Counselors Inc. (FCI) was retained by the Investment Committee pursuant to an agreement (the Agreement), dated November 3, 2014, to act as the independent fiduciary on behalf of the Plans, in connection with the Offering and an exemption application. Pursuant to the terms of the Agreement, FCI's responsibilities were to determine: (a) Whether or not and when to exercise or sell the Rights received by each Plan in the Offering; or (b) if it determined to exercise any of a Plan's Rights to purchase the Units, to manage the investment in the Notes and Warrants within that Plan's Stock Fund, and determine when to liquidate or exercise the Notes and Warrants for the purpose of reinvesting the proceeds in Holdings Stock.[23]

19. The Applicant represents that hiring an independent fiduciary to manage the holding and disposition of the Rights was appropriate in this case for the following reasons: (a) There would have been a significant cost to each Plan to develop and implement a process to administer a pass-through of the Rights to participants; (b) It was not practicable to initiate and implement a pass-through of the Rights to participants given the limited notice provided to shareholders of the Offering and the short subscription period (15

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[20] The Notes are unsecured obligations and bear interest at a rate of 8% per annum, which is paid semi-annually. The Notes mature on December 15, 2019. While the Notes are transferable, they are not listed on any exchange and can only be sold in a private transaction. Holdings issued $625 million aggregate original principal amount of the Notes in the Offering.

[21] Each Warrant is initially exercisable for one share of Holdings stock at an exercise price per share of $28.41. Subject to applicable laws and regulations, the Warrants may be exercised at any time starting on their date of issuance until 5:00 p.m., New York City time, on December 15, 2019. The exercise price may be paid with cash or Notes, provided that Holdings maintains an effective registration statement for the Holdings Stock issuable upon exercise of the Warrants. If the exercise of a Right would result in the delivery of a fractional Warrant, the number of Warrants would be rounded down to the nearest whole number. The Warrants are transferable and listed on the Nasdaq Global Select Market under "SHLDW."

[22] Each of the Plans was amended as required to: (i) Permit the Plan to temporarily acquire and hold the Rights (and any Notes or Warrants acquired through the exercise of the Rights) pending their orderly disposition; (ii) confirm that participants are not entitled to direct the holding, exercise, sale or other disposition of the Rights received by the Plan; and (iii) authorize the designated independent fiduciary to exercise discretionary authority with respect to the holding, exercise, sale or other disposition of the Rights and any Notes or Warrants acquired through the exercise of the Rights.

[23] Because the Rights were automatically issued to all shareholders including the Plans and there was no option to decline them, the independent fiduciary was not asked to determine whether the Plans should acquire the Rights.

days); (c) Participants' unfamiliarity with rights offerings as well as general participant inertia may have resulted in a significant percentage of participants allowing their Rights to expire without selling or exercising them; (d) The Notes and Warrants had not been previously selected by the plan fiduciary as an investment option appropriate for the Plan; and (5) The Rights are most appropriately viewed as a non-cash dividend payable to owners of Holdings Stock such as the Plans, so that the fiduciary of the Stock Fund is the appropriate person to manage the "proceeds" of the Plans' investment in Holdings Stock. The Applicant represents that, in this case, the independent fiduciary appointed to manage the Rights took responsibility for realizing the value in the Rights by selling them. The cash proceeds of that sale were then reinvested in Holdings Stock pursuant to the terms of the plan.

20. The Applicant represents that FCI is qualified to serve as the independent fiduciary for the Plans in connection with the Offering, because FCI is a registered investment adviser under the Investment Advisers Act of 1940, and over the past 13 years, FCI has served or is serving as an independent fiduciary on behalf of employee benefit plans in connection with more than 14 prohibited transaction exemption applications, not counting applications involving the Plans. Additionally, FCI represents that it is an independent company whose primary focus is providing independent fiduciary services for employee benefit plans.

21. In its "Report of Independent Fiduciary Regarding Sears Rights Offering for Debt and Warrants," dated February 23, 2015 (the IF Report), FCI represents and warrants that it is independent and unrelated to Holdings. FCI further represents that it did not directly or indirectly receive any compensation or other consideration for its own account in connection with the Offering, except compensation from Holdings for performing services described in the Agreement. The percentage of FCI's 2014 revenue derived from any party in interest involved in the subject transaction or its affiliates was less than five percent of FCI's 2013 revenue.

22. FCI represents further that it understands and acknowledges its duties and responsibilities under the Act in acting as a fiduciary on behalf of the Plans in connection with the Offering. In the IF Report, FCI represents that it conducted a due diligence process in evaluating the Offering on behalf of the Plans. This process included numerous discussions and correspondence with representatives of the Plans and Holdings, Holdings' counsel, broker-dealers, and representatives of the Plans' trustee, enabling FCI to better understand a number of important elements related to the Offering. In addition, FCI reviewed publicly available information and information provided by Holdings.

23. As detailed in the IF Report, with regard to the Offering, FCI considered the following four (4) options: (a) Continue holding the Rights within the Stock Fund; (b) Exercising all of the Rights and acquiring the Notes and Warrants, then sell the Notes or use them to exercise Warrants, sell or exercise the Warrants, and use any remaining cash to acquire Holdings Stock in the market; (c) Selling all of the Rights on the NASDAQ Global Select Market at the prevailing market price; or (d) Selling a portion of the Rights and using the proceeds to exercise the remaining Rights, so as to acquire Notes and Warrants (then sell the Notes or use them to exercise Warrants, then sell or exercise the Warrants and use any remaining cash to acquire Holdings Stock in the market). Acting as the independent fiduciary on behalf of the Plans, FCI chose to sell all of the Rights on the NASDAQ Global Select Market.

24. In determining to sell all of the Plans' Rights, FCI represents that the proceeds from the sale would be invested in Holdings Stock, as per the governing documents of the Stock Fund. As described in the IF Report, FCI determined that the benefits of selling the Rights included simplicity, lower transaction costs, and less exposure to risk than the options that involved exercising any of the Rights. According to FCI, this option allowed the Plans to realize the benefits of the Rights in a timely manner at the best available market prices so that cash raised through the sale could be reinvested in Holdings Stock, consistent with the purpose and intent of the Stock Fund. FCI understood that the Plans would incur some transactions costs through this option, estimated at $0.015 to $0.05 per Right traded. Accordingly, FCI concluded that this sale of the Rights was in the interest of the Plans and the Plans' participants and beneficiaries and was protective of such participants and beneficiaries of the Plans.

25. At FCI's direction, the Plans sold the Rights over a period of days while trying not to be too high a percentage of the daily volume so as to avoid putting downward pressure on the price of the Rights. The Trading Period ended on November 13, 2014. According to the IF Report, and as noted above, over the ten-day period that the Rights traded on the NASDAQ, the volume-weighted average price for the 751,041 Rights traded was $201.1554 according to data reported by Bloomberg. The IF Report provides that FCI completed the sale of the Plans' 17,189 Rights in blind transactions on the NASDAQ Global Select Market between November 4 and November 7, 2014, realizing an average selling price of $211.6283 per Right.

26. According to the Applicant, as a result of the Rights sale, the total net proceeds generated for the Savings Plan and the PR Plan was $3,637,509.54. These proceeds were credited to each Plan and the unit value of each participant's account balance reflected the addition of assets credited to the Plan.

27. The Applicant represents that no brokerage fees, commissions, subscription fees, or other charges were paid by the Plans with respect to the acquisition and holding of the Rights, or were paid to any broker affiliated with FCI or Holdings in connection with the sale of the Rights. In this regard, FCI represents that it selected State Street Global Markets as the broker for the sale of the Plans' Rights, based on FCI's confidence in the broker's execution ability and an attractive fee schedule of 0.015 cents per Right traded. In connection with the sale of the Rights, the Plans paid $257.84 in commissions to independent, third parties and $80.42 in SEC fees.

Requested Relief

28. The Applicant represents that the subject transactions have already been consummated. In this regard, the Plans acquired the Rights pursuant to the Offering, and held such Rights until the Rights were sold by the independent fiduciary. The Applicant states that, because there was insufficient time before the Plans acquired the Rights to apply for and be granted an exemption, Holdings was required to request retroactive relief, effective as of October 30, 2014, the Record Date.

29. Section 406(a)(1)(E) of the Act prohibits a fiduciary from causing a plan to engage in a transaction, if he knows or should know that such transaction constitutes a direct or indirect acquisition, on behalf of a plan, of any employer security or employer real property in violation of section 407(a). Section 406(a)(2) of the Act prohibits a fiduciary who has authority or discretion to control or manage the assets of a plan from permitting a plan to hold any employer security or employer real property if he knows or should know that holding such security or real property violates section 407(a).

The Applicant represents that because the Rights are non-qualifying employer securities, the acquisition and holding of the Rights violated sections 406(a)(1)(E), 406(a)(2), and 407(a) of the Act.

30. Furthermore, section 406(b)(1) of the Act prohibits a fiduciary from dealing with the assets of a plan in his own interest or for his own account. Section 406(b)(2) of the Act prohibits a fiduciary, in his individual or in any other capacity, from acting in any transaction involving the plan on behalf of a party (or representing a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries. The Applicant states that, although Holdings retained an independent fiduciary to represent the Plans in connection with the disposition of the Rights, by causing the participation of the Plans in the Offering, Holdings may have dealt with the assets of the Plans for its own account, and also may have acted in a transaction on behalf of itself and the Plans.

31. Therefore, the Applicant requests an administrative exemption from sections 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a)(1)(A) of the Act and section 4975 of the Code by reason of 4975(c)(1)(E) of the Code, with regard to the Savings Plan, and from sections 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a)(1)(A) of the Act with regard to the PR Plan.[24]

Statutory Findings

32. The Applicant represents that the requested exemption is administratively feasible because the acquisition, holding, and sale of the Rights by the Plans was a one-time transaction which will not require continued monitoring or other involvement by the Department.

33. The Applicant represents that the transactions which are the subject of this proposed exemption are in the interest of the Plans, because the Rights were automatically issued at no cost to all shareholders of Holdings Stock as of a specified Record Date, including the Plans. The Plans were then able to realize value through their sale.

34. The Applicant represents that the transactions were protective of the Plans, and their respective participants and beneficiaries, as the Plans obtained the Rights as a result of an independent act of Holdings as a corporate entity. In addition, the acquisition of the Rights by the Plans occurred on the same terms made available to other holders of Holdings Stock and the Plans received the same proportionate number of Rights as other owners of Holdings Stock. The Plans were also protected in that all decisions regarding the holding and disposition of the Rights by the Plans were made, in accordance with Plan provisions, by the independent fiduciary. Furthermore, the independent fiduciary determined that it would be in the interest of the Plans to sell all of the Rights received in the Offering by the Plans in blind transactions on the NASDAQ Global Select Market.

Summary

35. In summary, the Applicant represents that the proposed exemption satisfies the statutory criteria for an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code for the reasons stated above and for the following reasons:

(a) The receipt of the Rights by the Plans occurred in connection with the Offering, in which all shareholders of Holdings Stock, including the Plans, were treated in the same manner;

(b) The acquisition of the Rights by the Plans resulted from an independent act of Holdings, as a corporate entity, and without any participation on the part of the Plans;

(c) Each shareholder of Holdings Stock, including each of the Plans, received the same proportionate number of Rights based on the number of shares of Holdings Stock held by each such shareholder;

(d) All decisions with regard to the holding and disposition of the Rights by the Plans were made by a qualified, independent fiduciary within the meaning of 29 CFR 2570.31(j);

(e) The independent fiduciary determined that it would be in the interest of the Plans to sell all of the Rights received in the Offering by the Plans in blind transactions on the NASDAQ Global Select Market; and

(f) No brokerage fees, commissions, subscription fees, or other charges were paid by the Plans with respect to the acquisition and holding of the Rights, or were paid to any affiliate of Holdings or the independent fiduciary in connection with the sale of the Rights.

Notice to Interested Persons

Notice of the proposed exemption will be given to all interested persons within 22 days of the publication of the notice of proposed exemption in the **Federal Register**, by first class U.S. mail to the last known address of all such individuals. Such notice will contain a copy of the notice of proposed exemption, as published in the **Federal Register**, and a supplemental statement, as required pursuant to 29 CFR 2570.43(a)(2). The supplemental statement will inform interested persons of their right to comment on and to request a hearing with respect to the pending exemption. Written comments and hearing requests are due within 52 days of the publication of the notice of proposed exemption in the **Federal Register**. All comments will be made available to the public.

Warning: If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

FOR FURTHER INFORMATION CONTACT: Erin S. Hesse of the Department, telephone (202) 693–8546. (This is not a toll-free number.)

Sears Holdings 401(k) Savings Plan (the Savings Plan) and the Sears Holdings Puerto Rico Savings Plan (the PR Plan) (together, the Plans) Located in Hoffman Estates, IL

[Application Nos. D–11871 and D–11872, Respectively]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act (or ERISA), as amended, and section 4975(c)(2) of the Code, as amended, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).

Section I. Transactions

(a) If the proposed exemption is granted, the restrictions of sections 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a)(1)(A) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(E) of the Code,[25] shall not apply, effective for the period beginning June 11, 2015 and ending July 2, 2015, to the acquisition and holding by the Savings Plan of certain subscription rights (the Rights) to purchase shares of common stock (Seritage Growth Stock) in Seritage Growth Properties (Seritage Growth), in connection with an offering (the Offering) by Sears Holdings Corporation (Holdings or the Applicant) of Seritage Growth Stock, provided that the conditions, as set forth below in Section II of this proposed exemption were satisfied for the duration of the acquisition and holding; and

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[24] The Applicant represents that there is no jurisdiction under Title II of the Act with respect to the PR Plan. Accordingly, the Department is not providing any exemptive relief from section 4975(c)(1)(E) of the Code for the acquisition and holding of the Rights by the PR Plan.

[25] For purposes of this proposed exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

(b) If the proposed exemption is granted, the restrictions of sections 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a)(1)(A) of the Act[26] shall not apply, effective for the period beginning June 11, 2015, and ending July 2, 2015, to the acquisition and holding of the Rights by the PR Plan in connection with the Offering of Seritage Growth Stock by Holdings, provided that the conditions, as set forth in Section II of this proposed exemption were satisfied for the duration of the acquisition and holding.

Section II. Conditions

(a) The receipt of the Rights by the Plans occurred in connection with the Offering, in which all shareholders of the common stock of Holdings (Holdings Stock), including the Plans, were treated in the same manner;

(b) The acquisition of the Rights by the Plans resulted solely from an independent act of Holdings, as a corporate entity;

(c) Each shareholder of Holdings Stock, including each of the Plans, received the same proportionate number of Rights based on the number of shares of Holdings Stock held by each such shareholder;

(d) All decisions with regard to the holding and disposition of the Rights by the Plans were made by a qualified independent fiduciary (the Independent Fiduciary) within the meaning of 29 CFR 2570.31(j);[27]

(e) The Independent Fiduciary determined that it would be in the interest of the Plans to sell all of the Rights received in the Offering by the Plans in blind transactions on the New York Stock Exchange (NYSE); and

(f) No brokerage fees, commissions, subscription fees, or other charges were paid by the Plans with respect to the acquisition and holding of the Rights; or were paid to any affiliate of the Independent Fiduciary or Holdings, in connection with the sale of the Rights.

Section III. Definitions

(a) The term "Holdings" refers to Sears Holdings Corporation and its affiliates.

(b) The term "affiliate" of a person includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with such person;

(2) Any officer, director, partner, employee, or relative, as defined in section 3(15) of the Act, of such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(c) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

EFFECTIVE DATE: This proposed exemption, if granted, will be effective for the Offering period, beginning June 11, 2015, and ending July 2, 2015 (the Offering Period).

Summary of Facts and Representations[28]

The Plans

1. Employees of certain affiliates of Holdings participate in the Plans. The Plans consist of the Savings Plan and the PR Plan. The Plans are defined contribution, eligible individual account plans that are designed and operated to comply with the requirements of section 404(c) of the Act. The Plans allow participants to purchase units in certain stock funds which invest in Holdings Stock. In this regard, the Savings Plan and the PR Plan share a single stock fund (the Stock Fund) within the Sears Holdings 401(k) Savings Plan Master Trust (the Master Trust) to hold shares of Holdings Stock. As of June 11, 2015, the Master Trust held approximately $2.8 billion in total assets. State Street Bank and Trust Company (State Street) serves as the Master Trustee and Custodian for the Master Trust.

2. Sears, Roebuck and Co. (Sears Roebuck) and all of its wholly-owned (direct and indirect) subsidiaries (except Lands' End Inc. (Lands' End), Sears de Puerto Rico, Inc., Kmart Holding Corporation (Kmart), and its wholly-owned (direct and indirect) subsidiaries (excluding employees residing in Puerto Rico), and Sears Holdings Management Corporation, with respect to certain employees, have adopted the Savings Plan and are employers under such plan.

As of June 11, 2015, (the Record Date), there were 53,831 participants in the Savings Plan, and the Savings Plan's share of the total assets of the Master Trust was $2,820,235,014. Also, as of the Record Date, the Savings Plan's allocable portion of Holdings Stock held in the Stock Fund on behalf of 14,476 participants under the Master Trust was 1,286,302.45 shares, which constituted approximately 1.2% of the 106,603,021 shares of Holdings Stock issued and outstanding. The approximate percentage of the fair market value of the total assets of the Savings Plan invested in Holdings Stock was 1.3%.

The Savings Plan is administered by the Sears Holding Corporation Administrative Committee (the Administrative Committee), whose members are employees of Holdings. The Sears Holdings Corporation Investment Committee (the Investment Committee), whose members are officers and/or employees of Holdings and/or its subsidiaries, has authority over decisions relating to the investment of the Plans' assets.

3. The PR Plan, which is sponsored and maintained by Holdings, was originally established by Sears Roebuck for employees of Sears Roebuck de Puerto Rico Inc. (Sears Roebuck de Puerto Rico) and Kmart, who reside in the Commonwealth of Puerto Rico, upon the merger of the Kmart Corporation Retirement Savings Plan for Puerto Rico employees with and into the prior Sears Roebuck de Puerto Rico Savings Plan, as of March 31, 2012. According to the Applicant, the PR Plan has not made an election under section 1022(i)(2)of the Act, whereby such plan

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[26] The Applicant represents that there is no jurisdiction under Title II of the Act with respect to the PR Plan because the PR Plan fiduciaries have not made an election under section 1022(i)(2) of the Act, whereby the PR Plan would be treated as a trust created and organized in the United States for purposes of tax qualification under section 401(a) of the Code. Accordingly, the Department is not providing exemptive relief from section 4975(c)(1)(E) of the Code for the acquisition and holding of the Rights by the PR Plan.

[27] 29 CFR 2570.31(j) defines a "qualified independent fiduciary," in relevant part, to mean "any individual or entity with appropriate training, experience, and facilities to act on behalf of the plan regarding the exemption transaction in accordance with the fiduciary duties and responsibilities prescribed under the Act, that is independent of and unrelated to any party in interest engaging in the exemption transaction and its affiliates;" in general, a fiduciary is presumed to be independent "if the revenues it receives or is projected to receive, within the current federal income tax year from parties in interest (and their affiliates) [with respect] to the transaction are not more than 2% of such fiduciary's annual revenues based upon its prior income tax year. Although the presumption does not apply when the aforementioned percentage exceeds 2%, a fiduciary nonetheless may be considered independent based upon other facts and circumstances provided that it receives or is projected to receive revenues that are not more than 5% within the current federal income tax year from parties in interest (and their affiliates) [with respect] to the transaction based upon its prior income tax year."

[28] The Summary of Facts and Representations is based solely on the representations of the Applicant and does not reflect the views of the Department, unless indicated otherwise.

would be treated as a trust created and organized in the United States for purposes of tax qualification under section 401(a) of the Code. Therefore, according to the Applicant, there is no jurisdiction under Title II of the Act. There is, however, jurisdiction under Title I of the Act.

As of the Record Date, there were 1,696 participants in the PR Plan, and the PR Plan's share of the total assets of the Master Trust was $17,324,339. Also, as of the Record Date, the PR Plan's allocable portion of Holdings Stock held in the Stock Fund under the Master Trust on behalf of 629 participants was 39,782,55 shares, which constituted approximately 0.04% of the 106,603,021 shares of Holdings Stock issued and outstanding, on June 11, 2015. The approximate percentage of the fair market value of the total assets of the PR Plan invested in Holdings Stock was 6.5%,

The PR Plan is administered by the Administrative Committee, and the Investment Committee makes investment decisions for such plan. Banco Popular de Puerto Rico serves as the PR Plan trustee.

Holdings

4. Holdings, the sponsor of each of the Plans, is a retail merchant with full-line and specialty retail stores in the United States, Guam, Puerto Rico, the U.S. Virgin Islands, and Canada. Holdings was formed as a Delaware corporation in 2004 in connection with the merger of Kmart and Sears Roebuck, which took place on March 24, 2005. Holdings is the parent company of Kmart Holding Company and Sears Roebuck. The principal executive office of Holdings is located in Hoffman Estates, Illinois. According to the Form 10–K for the fiscal year ending January 31, 2015, Holdings and its subsidiaries had total assets of approximately $11.3 billion. Also as of January 31, 2015, Holdings and its subsidiaries employed approximately 196,000 employees.

Holdings Stock/Ownership

5. Common stock issued by Holdings (*i.e.*, Holdings Stock), with a par value $0.01 per share, is publicly-traded on the NASDAQ Global Select Market under the symbol, "SHLD." There were 11,659 shareholders of record, as of June 11, 2015.

ESL Investments, Inc. and its affiliates, (ESL), including Edward S. Lampert (Mr. Lampert) owned approximately 53.2% of Holdings Stock issued and outstanding as of June 9, 2015. Mr. Lampert is the Chairman of the Board of Directors and Chief Executive Officer of Holdings. He is also the Chairman and Chief Executive Officer of ESL.

Seritage Growth

6. Seritage Growth is a publicly traded, self-administered, self-managed real estate investment trust that is primarily engaged in the real property business through its investment in its operating partnership, Seritage Growth Properties, L.P. Seritage Growth's portfolio contains 235 wholly-owned properties and 31 joint venture properties, consisting of approximately 42 million square feet of building space, which is broadly diversified by location across 49 states and Puerto Rico. Pursuant to a master lease, 224 of Seritage Growth's wholly-owned properties are leased to Holdings and are operated under either the Sears Roebuck or K-Mart brand. The master lease provides Seritage with rights to recapture certain space from Sears Holdings at each property.

Prior to the Offering described below, Seritage Growth Stock was owned exclusively by Benjamin Schall, the Chief Executive Officer of Seritage Growth. Immediately following the Offering, ESL owned 4% of Seritage Growth Stock, 100% of Seritage Growth's Class B non-economic shares, 9.8% of Seritage Growth's voting power, 43.5% of Seritage Growth (Operating Partnership) units, and 45.3% of the consolidated economics of Seritage Growth and the Operating Partnership.[29]

The Offering

7. On April 1, 2015, Holdings announced its intention to conduct a Rights Offering of 53,298,899 shares of Seritage Growth Stock to Holdings shareholders. Holdings issued a prospectus describing the Offering of certain subscription Rights to shareholders of record, including the Master Trust, as of June 11, 2015, the Record Date. The Holdings Board of Directors determined that the Offering was in the best interest of Holdings and its stockholders. According to the Applicant, the purpose of the Offering was to allow Seritage Growth to purchase a portfolio of Holdings real properties from Holdings using the proceeds obtained from the Offering.

Under the terms of the Offering, all shareholders of Holdings Stock automatically received the Rights, at no charge. Specifically, each shareholder as of the Record Date, received one Right for every whole share of Holdings Stock it held. Each Right entitled the holder to purchase one half of one share of Seritage Growth Stock at the subscription price of $29.58 per whole share. According to the Applicant, the Rights were distributed as practicable as possible after the June 11, 2015 Record Date.

8. Each Right also contained an over-subscription privilege permitting the holder to subscribe for additional Seritage Growth Stock, up to the number of common shares that were not subscribed for by the other holders of the Rights. The Plans were not eligible to participate in the over-subscription privilege because the Independent Fiduciary sold the Rights received by the Plan, as discussed more fully below.

9. All shareholders of Holdings Stock held the Rights until such Rights expired, were exercised, or were sold. A shareholder had the right to exercise some, all, or none of its Rights. However, its election to exercise the Rights had to be received by the subscription agent, Computershare Trust Company, N.A., by July 2, 2015. The election to exercise any of the Rights was irrevocable.

All shareholders of Holdings Stock held the Rights until such Rights expired, were exercised, or were sold. Each shareholder of the Holdings Stock needed to have at least two Rights to purchase one whole share of Seritage Growth Stock, because only whole shares could be purchased by the exercise of the Rights. Fractional shares or cash in lieu of fractional shares were not issued in connection with the Offering. Fractional shares of the Seritage Growth Stock resulting from the exercise of basic Rights, as to any holder of such Rights were rounded down to the nearest whole number.

10. With regard to the sale of the Rights, the Applicant represents that the Rights were transferable. The Applicant also represents that the Rights began to trade on the NYSE under the symbol "SRGRT" on or around June 12, 2015, and continued to trade until the trading deadline at the close of business on June 26, 2015. Further, the Applicant explains that the trading deadline applied uniformly to all holders of the Rights.

11. The Offering expired at 5 p.m. New York City time on July 2, 2015. The Applicant represents that the Offering was oversubscribed and all of the Rights were exercised at a price of U.S. $29.58 per share of Seritage Growth Stock. Accordingly, in connection with the Offering, Seritage Growth offered and issued up to 106,603,021 Rights to

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[29] To clarify the relationship between Seritage Growth and the Operating Partnership, the Applicant represents that Seritage Growth is the general partner of the Operating Partnership and owns the majority of the Operating Partnership units.

purchase up to 53,298,899 shares of Seritage Growth Stock.

12. All of the gross proceeds from the exercise of the Rights to purchase Seritage Growth Stock, approximately $1,576,581,444, net of any selling expenses, were payable to and received by Seritage Growth. The Applicant asserts that the proceeds were or will be used by Seritage Growth to purchase a portfolio of real properties from Holdings.

13. Based on the ratio of one Right for each share of Holdings Stock held, the Applicant explains that the Master Trust acquired 1,326,085 Rights as a result of the Offering. While the Plans generally permit participants to direct the investment of their own accounts, including their investments in Holdings Stock, the Applicant represents that all decisions regarding the holding and disposition of the Rights by each Plan were made, in accordance with the Plan provisions, by the Independent Fiduciary acting solely in the interest of Plan participants. According to the Applicant, participants in the Plans who were invested in Holdings Stock as of the Record Date were notified of the Offering, the engagement of the Independent Fiduciary, the fact that the Rights would be held in the Stock Fund, that the Independent Fiduciary would determine whether the Rights should be exercised or sold, and the means by which a participant could obtain more information. The Applicant further represents that Holdings communicated generally with employees regarding the Offering and with the public through public releases at *www.searsholdings.com*.

Role of the Independent Fiduciary

14. Evercore Trust Company, N.A. (Evercore) was retained by the Investment Committee, pursuant to an agreement (the Agreement) dated June 5, 2015, to act as the Independent Fiduciary on behalf of the Plans, in connection with the Offering and with the application for exemption submitted to the Department. Pursuant to the terms of the Agreement, Evercore's responsibilities were: (a) To determine whether and when to exercise or sell each of the Plan's Rights; and (b) if it determined to exercise any of a Plan's Rights to purchase Seritage Growth Stock, to manage the investment within that Plan's Stock Fund, and determine when to liquidate or exercise the shares for the purpose of reinvesting the proceeds in Holdings Stock.

The Applicant represents that hiring an Independent Fiduciary to manage the holding and disposition of the Rights was appropriate in this case for the following reasons: (a) There would have been a significant cost to develop and implement a process under each Plan to administer the pass-through of the Rights to participants; (b) it was not practicable to initiate and implement a pass-through of the Rights to participants given the limited notice provided to shareholders of the Offering and the short subscription period (21 days), because such process would have included the establishment of a "rights fund" and a Seritage Growth fund within each Plan, the design and testing of procedures for allocating the Rights among participant accounts, soliciting participant directions on the exercise or sale of the Rights and identifying the source of funding (*e.g.*, which investment account is to be liquidated) for each participant who chose to exercise the Rights, and the short Offering Period meant that there would have been insufficient time to adequately educate participants regarding their rights and obligations; (c) there would have been a loss of value that participants might otherwise have gained, because participants' unfamiliarity with rights offerings as well as general participant inertia would have resulted in a significant percentage of participants allowing their Rights to expire without selling or exercising them; (d) it was not in the interest of participants to require the Plans to offer and hold for participant investment a single stock (*i.e.*, Seritage Growth Stock) that had not been selected by the plan fiduciary as an investment option appropriate for the Plans; and (e) the Rights are most appropriately viewed as a non-cash dividend payable to owners of Holdings Stock, such as the Plans, so that the fiduciary of the Stock Fund is the appropriate person to manage the "proceeds" of the Plans' investment in Holdings Stock. The Applicant represents that, in this case, the Independent Fiduciary appointed to manage the Rights on behalf of the Plans took responsibility for realizing the value in the Rights by selling them. The cash proceeds of the sale were then reinvested in Holdings Stock pursuant to the terms of the Plans.

In the Agreement, Evercore represents that it is qualified to serve as the Independent Fiduciary for the Plans in connection with the Offering because it is a national trust bank chartered by the Office of the Comptroller of the Currency. Evercore states that it has provided specialized investment management, independent fiduciary, and trustee services to employee benefit plans since 1987. Evercore also represents that it has served or is serving as an independent fiduciary on behalf of employee benefit plans in connection with more than 50 prohibited transaction exemption applications that have been filed with the Department.

In the Agreement, Evercore further represents that it is independent and unrelated to Holdings, and that it did not directly or indirectly receive any compensation or other consideration for its own account in connection with the Offering, except compensation from Holdings for performing services described in the Agreement. According to the Agreement, Evercore states that the gross revenue it received (or expected to receive) in 2015 that was derived from any party in interest or an affiliate of such party in interest involved in the Seritage Growth transaction, would represent less than 2% its 2014 gross revenue. Also, in the Agreement, Evercore represents that it understood and acknowledged its duties and responsibilities under the Act in acting as a fiduciary on behalf of the Plans in connection with the Offering.

In addition, Evercore represents that it conducted a due diligence process in evaluating the Offering on behalf of the Plans. This process included discussions and correspondence with representatives of the Plans, Holdings, Holdings' counsel, broker-dealers, and representatives of the trustee of the Master Trust, enabling Evercore to improve certain elements related to the Offering. Evercore also states that it reviewed publicly available information and information provided by Holdings.

With regard to the Offering, Evercore explains that it considered four options on behalf of the Plans: (a) To continue holding the Rights within the Stock Fund; (b) to exercise all of the Rights to acquire Seritage Growth Stock; (c) to sell all of the Rights on the NYSE at the prevailing market price; or (d) to sell a portion of the Rights and use the proceeds to exercise the remaining Rights to acquire Seritage Growth Stock.

In determining to sell all of the Plans' Rights, Evercore represents that the proceeds from the sale would be invested in Holdings Stock, in accordance with the governing documents of the Stock Fund. Evercore reasoned that, although the Plans would incur some transaction costs by selling the Rights, estimated at $0.01 per Right traded, plus a similar expense in connection with the reinvestment of the proceeds into shares of Holdings Stock, the benefits of selling the Rights included the fact that the proceeds could be quickly redeployed into shares of Holdings Stock, lower transaction costs, and less exposure to risk than the options that involved exercising any of the Rights. Accordingly, Evercore concluded that the sale of the Rights was in the interest of the Plans and the Plans' participants and beneficiaries and was protective of such participants and beneficiaries of the Plans.

15. As a result of the sale of 1,326,085 Rights that were acquired by the Master Trust during the Offering, the total net proceeds generated for the Savings Plan and the PR Plan was $4,106,921.19. These proceeds were credited to the Stock Fund, and thus, to each Plan. The unit value of each participant's account balance in each Plan reflected the addition of the proceeds to the Stock Fund (as applicable).

The trading period for the sale of the Rights on the NYSE ended on June 26, 2015. Evercore sold the Plans' 1,326,085 Rights in blind transactions on the NYSE between June 16 and June 19, 2015, realizing an average selling price of $3.10 per Right. According to the Applicant, the volume-weighted average price for a total of 46,699,673 Rights that were sold during the trading period was $3.66, according to data reported by Factset.

16. Evercore represents that, as noted in the Independent Fiduciary Report, its goal in selling the Rights was to dispose of them in a timely manner at the best available market prices so that cash raised through the sale could be reinvested in shares of Holdings Stock as soon as possible and at the discretion of State Street, the Master Trustee and Custodian of the Master Trust. This, according to Evercore was consistent with the purpose and intent of the Stock Fund.

Evercore explains that it also believed it was prudent to take advantage of available liquidity early in the Offering Period, given the typical decline in trading volume experienced over the course of a rights offering period. Evercore states that it promptly began to sell the Rights once it was informed that the Rights had been delivered to the Stock Fund account. The liquidation lasted four days, beginning on June 16, 2015, and ending on June 19, 2015. The Rights continued to trade over five more days (June 22 to June 26), during which time the price of the Rights rose. This rise in price, Evercore asserts, was entirely unpredictable beforehand. Waiting for such a potential outcome, Evercore explains, would have been at odds with its goal of promptly realizing and reallocating proceeds, and further would have exposed the Plans to the risk of a significant decline in the price of the Rights over the course of the offering period.

17. In the opinion of Evercore, the actions outlined above in which it was engaged on behalf of the Plans, were in the interest of the Plans and the Plans' participants and beneficiaries, and were protective of the rights of such participants and beneficiaries of the Plans.

18. No brokerage fees, commissions, subscription fees, or other charges were paid by the Plans with respect to the acquisition and holding of the Rights, or were paid to any broker affiliated with Evercore, or Holdings, in connection with the sale of the Rights. In this regard, it is represented that Evercore selected State Street Global Markets to execute the trades for the sale of the Rights issued to the Master Trust, based on Evercore's confidence in that broker's execution ability and an attractive fee schedule of 0.01 cent per Right traded. In connection with the sale of the Rights, the Plans (through the Master Trust) paid $13,260.85 in commissions and $75.83 in SEC fees.[30]

Requested Relief

19. The application was filed by Holdings on behalf of itself and its affiliates. In this regard, Holdings has requested an exemption for the acquisition and holding of the Rights by the Plans in connection with the Offering of Seritage Growth Stock by Holdings. The Applicant represents that the subject transactions have already been consummated. In this regard, the Plans acquired the Rights pursuant to the Offering, and held such Rights until they were sold by the Independent Fiduciary. The Applicant states that, because there was insufficient time between the dates the Plans acquired the Rights and when the Rights were sold to apply for and be granted an administrative exemption by the Department, Holdings requested retroactive exemptive relief for the period June 11, 2015, through July 2, 2015.

20. Section 406(a)(1)(E) of the Act prohibits a fiduciary from causing a plan to engage in a transaction, if he knows or should know that such transaction constitutes a direct or indirect acquisition, on behalf of a plan, of any employer security or employer real property in violation of section 407(a). Section 406(a)(2) of the Act prohibits a fiduciary who has authority or discretion to control or manage the assets of a plan from permitting a plan to hold any employer security or employer real property if he knows or should know that holding such security or real property violates section 407(a). The Applicant represents that because the Rights are non-qualifying employer securities, the acquisition and holding of the Rights by the Plans violated sections 406(a)(1)(E), 406(a)(2), and 407(a) of the Act.

Furthermore, section 406(b)(1) of the Act prohibits a fiduciary from dealing with the assets of a plan in his own interest or for his own account. Section 406(b)(2) of the Act prohibits a fiduciary, in his individual or in any other capacity, from acting in any transaction involving the plan on behalf of a party (or representing a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries. The Applicant states that, although Holdings retained the Independent Fiduciary to represent the Plans in connection with the disposition of the Rights, by causing the participation of the Plans in the Offering, Holdings may have dealt with the assets of the Plans for its own account, and also may have acted in a transaction on behalf of itself and the Plans.

Therefore, the Applicant requests an administrative exemption from sections 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a)(1)(A) of the Act and section 4975 of the Code by reason of 4975(c)(1)(E) of the Code, with regard to the Savings Plan, and from sections 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a)(1)(A) of the Act with regard to the PR Plan.

Statutory Findings

21. The Applicant represents that the proposed transactions are administratively feasible because the acquisition and holding of the Rights by the Plans were one-time transactions that involved an automatic distribution of the Rights to all shareholders, that would not require any continuing oversight by the Department.

The Applicant also represents that the subject transactions were in the interest of the Plans and their respective participants and beneficiaries, because the Rights were automatically issued at no cost to the shareholders of Holdings Stock, including the Plans, as of the Record Date.

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[30] The Applicant represents that the brokerage services and the fees that were received by State Street Global Markets in connection with the sale of the Rights by the Plans, are exempt under section 408(b)(2) of the Act. The Department, herein, is not providing any relief for the receipt of any commissions, fees, or expenses in connection with the sale of the Rights in blind transactions to unrelated third parties on the NYSE, beyond that provided pursuant to section 408(b)(2) of the Act. In this regard, the Department is not opining as to whether the conditions as set forth in section 408(b)(2) of the Act and the Department's regulations, pursuant to 29 CFR 2550.408(b)(2) have been satisfied.

Finally, the Applicant represents that the transactions were protective of the rights of the participants and beneficiaries of the respective Plans because the Plans obtained the Rights as a result of an independent act of Holdings as a corporate entity. In addition, the acquisition of the Rights by the Plans occurred on the same terms made available to other holders of Holdings Stock, and the Plans received the same proportionate number of Rights as other owners of Holdings Stock. The Plans were also protected in that all decisions regarding the holding and disposition of the Rights by the Plans were made, in accordance with Plan provisions, by the Independent Fiduciary. Furthermore, the Applicant represents that the Independent Fiduciary determined that it would be in the interest of the Plans to sell all of the Rights received in the Offering by the Plans in blind transactions on the NYSE.

Summary

22. In summary, Holdings represents that the subject transactions satisfy the statutory criteria for an exemption under of section 408(a) of the Act because:

(a) The receipt of the Rights by the Plans occurred in connection with the Offering in which all shareholders of Holdings Stock, including the Plans, were treated in the same manner;

(b) The acquisition of the Rights by the Plans resulted solely from an independent act of Holdings, as a corporate entity;

(c) Each shareholder of Holdings Stock, including each of the Plans, received the same proportionate number of Rights based on the number of shares of Holdings Stock held by each such shareholder;

(d) All decisions with regard to the holding and disposition of the Rights by the Plans were made by the Independent Fiduciary on behalf of the Plans;

(e) The Independent Fiduciary determined that it would be in the interest of the Plans to sell all of the Rights received in the Offering by the Plans in blind transactions on the NYSE;

(f) No brokerage fees, commissions, subscription fees, or other charges were paid by the Plans with respect to the acquisition and holding of the Rights; or were paid to any broker affiliated with the Independent Fiduciary or Holdings, in connection with the sale of the Rights; and

(g) The acquisition of the Rights by the Plans occurred on the same terms made available to other shareholders of Holdings Stock.

Notice to Interested Persons

The persons who may be interested in the publication in the **Federal Register** of the Notice of Proposed Exemption (the Notice) include all participants whose accounts in the Plans were invested on the Record Date through the Master Trust in the Stock Fund which held the Holdings Stock.

It is represented that all such interested persons will be notified of the publication of the Notice by first class mail, to each such interested person's last known address within 22 days of publication of the Notice in the **Federal Register**. Such mailing will contain a copy of the Notice, as it appears in the **Federal Register** on the date of publication, plus a copy of the Supplemental Statement, as required, pursuant to 29 CFR 2570.43(a)(2), which will advise all interested persons of their right to comment and to request a hearing. A11 written comments and/or requests for a hearing must be received by the Department from interested persons within 52 days of the publication of this proposed exemption in the **Federal Register**.

All comments will be made available to the public.

Warning: Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

FOR FURTHER INFORMATION CONTACT: Ms. Blessed Chuksorji-Keefe of the Department, telephone (202) 693–8567. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 6th day of May, 2016.

Lyssa E. Hall,

Director, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2016–11115 Filed 5–11–16; 8:45 am]

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Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Parts 61, 63, 91, Et al.
Regulatory Relief: Aviation Training Devices; Pilot Certification, Training, and Pilot Schools; and Other Provisions; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 61, 63, 91, 121, 135, 141

[Docket No.: FAA–2016–6142; Notice No. 16–02]

RIN 2120–AK28

Regulatory Relief: Aviation Training Devices; Pilot Certification, Training, and Pilot Schools; and Other Provisions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This rulemaking would relieve burdens on pilots seeking to obtain aeronautical experience, training, and certification by increasing the allowed use of aviation training devices. These training devices have proven to be an effective, safe, and affordable means of obtaining pilot experience. This rulemaking also would address changing technologies by accommodating the use of technically advanced airplanes as an alternative to the use of older complex single engine airplanes for the commercial pilot training and testing requirements. Additionally, this rulemaking would broaden the opportunities for military instructors to obtain civilian ratings based on military experience, would expand opportunities for logging pilot time, and would remove a burden from sport pilot instructors by permitting them to serve as safety pilots. Finally, this rulemaking would include changes to some of the provisions established in an August 2009 final rule. These actions are necessary to bring the regulations in line with current needs and activities of the general aviation training community and pilots.

DATES: Send comments on or before August 10, 2016.

ADDRESSES: Send comments identified by docket number FAA–2016–6142 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Marcel Bernard, Airmen Certification and Training Branch, Flight Standards Service, AFS–810, Federal Aviation Administration, 55 M Street SE., 8th Floor, Washington, DC 20003–3522; telephone (202) 267–1100; email *marcel.bernard@faa.gov.*

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List of Abbreviations Frequently Used in This Document

AATD—Advanced aviation training device
AC—Advisory Circular
ATD—Aviation training device
ATP—Airline transport pilot
BATD—Basic aviation training device
FFS—Full flight simulator
FTD—Flight training device
FSTD—Flight simulation training device
ICAO—International Civil Aviation Organization
IFR—Instrument flight rules
LOA—Letter of authorization
LODA—Letter of deviation authority
MFD—Multi-function display
NPRM—Notice of proposed rulemaking
PFD—Primary flight display
PIC—Pilot in command
SIC—Second in command
TAA—Technically advanced airplane
VFR—Visual flight rules

I. Executive Summary

On January 18, 2011, the President signed Executive Order 13563, Improving Regulation and Regulatory Review. Among other things, Section 6 of that Executive Order directs agencies to conduct a retrospective analysis of existing rules. Specifically, Executive

Order 13563 provides that "[t]o facilitate the periodic review of existing significant regulations, agencies shall consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned."

Consistent with Executive Order 13563, the FAA routinely evaluates existing regulations and other requirements. The FAA works to identify unnecessary, duplicative, or ineffective regulations and to mitigate the impacts of those regulations, where possible, without compromising safety.

As part of the FAA's continuing obligation to review its regulations, the agency has conducted an analysis of 14 CFR parts 61, 91, and 141 to identify provisions that are outmoded, ineffective, or involve an unnecessary burden. This notice of proposed rulemaking (NPRM) is the result of the FAA's analysis of its regulations and includes proposed amendments that are consistent with the retrospective regulatory review requirements of Executive Order 13563. The proposed amendments reduce or relieve existing burdens on the general aviation community. Several of these proposed changes have resulted from suggestions from the general aviation community through petitions for rulemaking, industry/agency meetings, and requests for legal interpretation. The proposed changes include increases in the use of aviation training devices (ATDs), flight training devices (FTDs), and full flight simulators (FFSs); expanding opportunities for pilots in part 135 operations to log flight time, allowing an alternative to the complex airplane requirement for commercial pilot training, and permitting pilots to credit some of their sport pilot training toward a higher certificate. Because this rulemaking includes proposals that affect several disparate subject areas within the regulations, the FAA has provided the necessary background information in the separate sections of this document that discuss each proposed rule change.

Summary of Proposed Provisions

Table 1 summarizes the provisions included in this rule, the sections affected, and the total cost savings (benefits) for a 5-year analysis period. All of the provisions proposed in this rule are either relieving or voluntary. For those provisions that are relieving, no person affected is anticipated to incur any costs associated with the relieving nature of the provision. The FAA assumes that as these provisions are relieving, all persons affected would use the provisions as they would be beneficial. For those proposed provisions that are voluntary, persons who wish to use the new provisions will do so only if the benefit they would accrue from their use exceeds any cost they might incur to comply with the new provision.

TABLE 1—SUMMARY OF PROVISIONS IN THE PROPOSED RULE [1]

Provision	Summary	§§ Affected	Total cost savings (benefits) for 5-year analysis period
Aviation Training Devices			
Instructor requirement when using an FFS, FTD, or ATD to complete instrument recency.	Remove the requirement to have an instructor present when accomplishing flight experience requirements for instrument recency in an FAA-approved FFS, FTD, or ATD.	61.51(g)(5)	The cost savings benefits equal about $12.1 million or $10.6 million in present value at a 7 percent discount rate.
Instrument recency experience requirements.	Reduce frequency of instrument recency flight experience accomplished exclusively in ATDs from every two months to every six months. Reduce number of tasks and remove three-hour flight time requirement when accomplishing instrument recency flight experience in ATDs.	61.57(c), 135.245	The cost savings benefits equal about $79.4 million or $69.6 million in present value at a 7 percent discount rate.
Pilot Certification, Training, and Pilot Schools			
Second in command for part 135 operations.	Allow a pilot to log SIC flight time in a multi-engine airplane in a part 135 operation that does not require an SIC.	61.1, 61.39(a), 61.51(e), (f), 61.159(a), (c), 61.161, 135.99(c), 61.1, 61.129(a)(3)(ii), appendix D to part 141.	The FAA considers this to be a minimum cost rule with positive, but difficult to quantify, benefits.
Completion of commercial pilot training and testing in technically advanced airplanes (TAA).	Allow TAA to be used to meet some or all of the currently required 10 hours of training that must be completed in a complex or turbine-powered airplane for the single engine commercial pilot certificate. TAA could be used in combination with, or instead of, a complex or turbine-powered airplane to meet the aeronautical experience requirement and could be used to complete the practical test.		The cost savings benefits equal about $9.7 million or $8 million in present value at a 7 percent discount rate.

TABLE 1—SUMMARY OF PROVISIONS IN THE PROPOSED RULE [1]—Continued

Provision	Summary	§§ Affected	Total cost savings (benefits) for 5-year analysis period
Flight instructors with instrument ratings only.	Remove the requirement that instrument only instructors have category and class ratings on their flight instructor certificates to provide instrument training.	61.195(b), (c)	The cost savings benefits equal about $1.7 million or $1.5 million in present value at a 7 percent discount rate.
Sport pilot flight instructor training privilege.	Allow a sport pilot only instructor to provide training on control and maneuvering solely by reference to the flight instruments (for sport pilot students only).	61.412, 61.415(h), 91.109(c).	Sport pilot flight instructors who choose to receive this endorsement have determined that they would be able to recoup this cost by providing training to sport pilot students.
Credit for training obtained as a sport pilot.	Allow sport pilot training to be credited for certain aeronautical experience requirements for a higher certificate or rating.	61.99, 61.109(l)	If all 5,259 sport pilots choose to use the lower cost option, the cost savings would exceed $8.0 million. We have used $8.0 million as a one-time event in the benefit-cost analysis.
Include special curricula courses in renewal of pilot school certificate.	Allow part 141 pilot schools to count FAA approved "special curricula" course completions (graduates of these courses) toward certificate renewal requirements.	141.5(d)	This proposed rule provision provides potential unquantified benefits which exceed minimal compliance costs.
Other Provisions			
Temporary validation of flightcrew members' certificates.	Allow a confirmation document issued by a part 119 certificate holder authorized to conduct operations under part 121 or 135 to serve as a temporary verification of the airman certificate and/or medical certificate during domestic operations for up to 72 hours.	61.3(a), 63.3(a), 63.16, 121.383(c), 135.95.	This proposed rule would relieve both the FAA and stakeholders from the burden of the exemption process, which must be completed every two years. The cost savings, while real, are small and believed to be de minimis.
Military competence for Flight Instructors.	Allow the addition of a flight instructor rating based on military competency to "simultaneously qualify" for the reinstatement of that expired FAA flight instructor certificate.	61.197, 61.199	The cost savings benefits equal about $1.4 million or $1.2 million in present value at a 7 percent discount rate.
Restricted Category Aircraft training and testing allowances.	Allow an operator to request and obtain a letter of deviation authority to conduct training and testing and other directly related activities for employees to obtain a type rating in a restricted category aircraft.	91.313	The benefits will exceed costs for those who choose to comply.
Single Pilot Operations of Former Military Airplanes and Other Airplanes with Special Airworthiness Certificates.	Allow pilots to operate certain large and turbojet-powered airplanes (specifically former military and some airplanes not type certificated in the standard category) without a pilot who is designated as SIC.	91.531	The benefits will exceed costs for those who choose to comply.

II. Authority for This Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code (49 U.S.C.). Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in 49 U.S.C. 106(f), which establishes the authority of the Administrator to promulgate regulations and rules; 49 U.S.C. 44701(a)(5), which requires the Administrator to promote safe flight of civil aircraft in air commerce by prescribing regulations and setting minimum standards for other practices, methods, and procedures necessary for safety in air commerce and national security; and 49 U.S.C. 44703(a), which requires the Administrator to prescribe regulations for the issuance of airman certificates when the Administrator finds, after investigation, that an individual is qualified for, and physically able to perform the duties related to, the position authorized by the certificate. Consistent with this authority and with the retrospective regulatory review requirements of Executive Order 13563, this rulemaking includes certain proposed amendments that would reduce or relieve existing burdens on the general aviation community.

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[1] The agency recommends that commenters reference the title of the provision to which they are commenting as it appears in the first column of this table for ease of reference.

III. Discussion of the Proposed Rule

A. Aviation Training Devices

Since the 1970s, the FAA has gradually expanded the use of flight simulation for training—first permitting simulation to be used in air carrier training programs and eventually permitting pilots to credit time in devices toward the aeronautical experience requirements for airman certification and recency. Currently, Title 14 of the Code of Federal Regulations (14 CFR) part 60 governs the qualification of flight simulation training devices (FSTD) which include FFSs and FTDs levels 4 through 7. The FAA has, however, approved other devices including ATDs for use in pilot certification training, under the authority provided in 14 CFR 61.4(c).[2]

For over 30 years, the FAA has issued letters of authorization (LOAs) to manufacturers of ground trainers, personal computer-based aviation training devices (PCATD), FTDs (levels 1 through 3), basic aviation training devices (BATD), and advanced aviation training devices (AATD). These LOAs were based on guidance provided in advisory circulars that set forth the qualifications and capabilities for the devices. Prior to 2008, most LOAs were issued under the guidance provided in advisory circular AC 61–126, Qualification and Approval of Personal Computer-Based Aviation Training Devices, and AC 120–45, Airplane Flight Training Device Qualification. Since July 2008, the FAA has been approving devices in accordance with Advisory Circular 61–136, FAA Approval of Basic Aviation Training Devices (BATD) and Advanced Aviation Training Devices (AATD).

In 2009, the FAA issued a final rule that for the first time introduced the term "aviation training device" into the regulations and placed express limits on the amount of instrument time that could be credited in an ATD toward the aeronautical experience requirements for an instrument rating.[3]

Since the 2009 final rule, the regulations permit ATDs to be used for the purpose of satisfying instrument recency experience requirements. As set forth in § 61.57, pilots who complete instrument recency experience exclusively in ATDs must complete more tasks at more frequent intervals than those pilots who use aircraft, FFSs, and FTDs.

Despite the limitations on the use of ATDs that were set forth in the 2009 final rule, the FAA had issued hundreds of LOAs to manufacturers of devices that permitted ATDs (as well as ground trainers, PCATDs, and FTDs (levels 1 through 3)) to be used to a greater extent than were ultimately set forth in the regulations. Even after publication of the 2009 final rule, the FAA continued to issue LOAs in excess of the express limitations in the regulations. On January 2, 2014, the FAA published a notice of policy to reissue LOAs to reflect current regulatory requirements. 79 FR 20. The FAA concluded that it could not use LOAs to exceed express limitations that had been placed in the regulations through notice and comment rulemaking.

As discussed further in the following two sections, the FAA is proposing to amend the regulations governing the use of ATDs to increase the use of these devices for instrument training and instrument recency experience requirements above the levels established in the 2009 final rule. In developing this proposed rule, the FAA notes that ATD development has advanced to an impressive level of capability. Many ATDs can simulate weather conditions with variable winds, variable ceilings and visibility, icing, turbulence, high definition (HD) visuals, hundreds of different equipment failure scenarios, navigation specific to current charts and topography, specific navigation and communication equipment use, variable "aircraft specific" performance, and more. The visual and motion component of some of these devices permit maneuvers that require outside visual references in an aircraft to be successfully taught in an AATD. Many of these simulation capabilities were not possible in PCATDs and BATDs that the FAA approved for 10 hours of instrument time.

The FAA believes that permitting pilots to log increased time in ATDs would encourage pilots to practice maneuvers until they are performed to an acceptable level of proficiency. In an ATD, a pilot can replay the training scenario, identify any improper action, and determine corrective actions without undue hazard or risk to persons or property. In this fashion, a pilot can continue to practice tasks and maneuvers in a safe, effective, and cost efficient means of maintaining proficiency.

In a recent notice of proposed rulemaking (NPRM),[4] the FAA proposed to increase the maximum time that may be credited in an ATD toward the aeronautical experience requirements for an instrument rating under § 61.65(i). The NPRM proposed to permit a person to credit a maximum of 20 hours of aeronautical experience acquired in an approved ATD toward the requirements for an instrument rating. By LOA, devices that qualify as AATDs were proposed to be authorized for up to 20 hours of experience to meet the instrument time requirements. Devices that qualify as BATDs were proposed to be authorized, by LOA, for a maximum of 10 hours of experience to meet the instrument time requirements.

Based on the comments received to the NPRM, the final rule[5] revised § 61.65 to include a specified allowance of 10 hours for BATDs and 20 hours for AATDs in part 61 (combined use not to exceed 20 hours) for the instrument rating.

The NPRM also addressed the use of ATDs in approved instrument rating courses. The NPRM proposed to amend appendix C to part 141 to increase the limit on the amount of training hours that may be accomplished in an ATD in an approved course for an instrument rating. The FAA proposed to allow ATDs to be used for no more than 40% of the total flight training hour requirements in an approved instrument rating course.

Based on the comments received to the NPRM, the final rule revised appendix C to part 141 to include a specified allowance of 25% of creditable time in BATDs[6] and 40% of creditable time for AATDs under part 141 (not to exceed 40% total time) for the instrument rating.

The FAA is now proposing to define ATD in § 61.1 as a training device, other than a full flight simulator or flight training device, that has been evaluated, qualified, and approved by the Administrator. The FAA is proposing to add a definition of aviation training device to 61.1 to differentiate ATDs from FFS and FTDs approved under part 60 and to establish that an ATD must be approved by the Administrator to be used to meet aeronautical experience requirements under part 61. The FAA will continue to evaluate, qualify, and approve these devices in accordance with the guidance set forth in AC 61–136, which has been placed in the docket for this rulemaking.[7]

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[2] Section 61.4(c) states that the "Administrator may approve a device other than a flight simulator or flight training device for specific purposes."

[3] In a 2007 NPRM, the FAA proposed to limit the time in a personal computer-based aviation training device that could be credited toward the instrument rating. *Pilot, Flight Instructor, and Pilot School Certification* NPRM, 72 FR 5806 (February 7, 2007). Three commenters recommended that the FAA use the terms "basic aviation training device" (BATD) and "advanced aviation training device" (AATD). *Pilot, Flight Instructor, and Pilot School Certification* Final Rule, 74 FR 42500 (August 21, 2009) ("2009 Final Rule"). In response to the commenters, the FAA changed the regulatory text in the final rule to "aviation training device," noting BATDs and AATDs "as being aviation training devices (ATD) are defined" in an advisory circular.

[4] Aviation Training Device Credit for Pilot Certification, 80 FR 34338 (Jun. 16, 2015).

[5] 81 FR 21449 (Apr. 12, 2016).

[6] If a course of training is approved under the minimum requirements as prescribed in part 141 Appendix C for the instrument rating (35 hours of training required), 25% in a BATD would equate to 8.75 hours and 40% in an AATD would equate to 14 hours.

1. Instructor Requirement When Using a Full Flight Simulator, Flight Training Device, or Aviation Training Device To Complete Instrument Recency Experience

Currently, pilots who perform instrument recency experience requirements in an aircraft are not required to have an authorized instructor present to observe the time. Rather, the pilot can perform the required tasks in actual instrument conditions or in simulated instrument conditions with a safety pilot on board the aircraft. A pilot who accomplishes instrument recency experience in an FFS, FTD, or ATD, however, must have an authorized instructor present to observe the time and sign the pilot's logbook. 14 CFR 61.51(g)(4).

In revising § 61.57 in the 2009 final rule to include the option of using ATDs for meeting instrument recency experience, the preamble indicated that the FAA did not intend for an authorized instructor to be present during instrument recency experience performed in an FSTD or an ATD. It stated: "[A] person who is instrument current or is within the second 6-calendar month period * * * need not have a flight instructor or ground instructor present when accomplishing the approaches, holding, and course intercepting/tracking tasks of § 61.57(c)(1)(i), (ii), and (iii) in an approved flight training device or flight simulator." 74 FR 42500, 42518. In 2010, the FAA issued a legal interpretation[8] stating that, based on the express language in § 61.51(g)(4), an instructor must be present in order for a pilot to accomplish instrument recency experience in an FSTD or ATD. That interpretation acknowledged, however, that the FAA had indicated in the 2009 preamble some intention to change the requirement but that the change was not reflected in the regulation.

The FAA is proposing to amend § 61.51(g) by revising paragraph (g)(4) and adding a new paragraph (g)(5) to allow a pilot to accomplish instrument recency experience when using an FAA-approved FFS, FTD, or ATD—just as he or she might do when completing instrument recency experience in an aircraft—without an instructor present. Because instrument recency experience is not training, the FAA no longer believes it is necessary to have an instructor present when instrument recency experience is accomplished in an FSTD or ATD. An instrument-rated pilot has demonstrated proficiency during a practical test with an examiner. It can be expensive to hire an instructor to observe a pilot performing the instrument experience requirements solely to verify that the instrument recency experience was performed.[9] As noted above, practice in an ATD has the distinct advantage of pause and review of pilot performance not available in an aircraft.

As with instrument recency experience accomplished in an aircraft, the pilot would continue to be required to verify and document this time in his or her logbook. The FAA is retaining the requirement that an authorized instructor must be present in an FSTD or ATD when a pilot is logging time to meet the requirements of a certificate or rating, for example, under §§ 61.51(g)(4), 61.65 and 61.129.

2. Instrument Recency Experience Requirements

Currently, under § 61.57(c), to act as pilot in command (PIC) of an aircraft under instrument flight rules (IFR) or in weather conditions less than the minimums prescribed for visual flight rules (VFR), an instrument-rated pilot must accomplish instrument experience (often described as instrument practice, currency or recency) within a certain period preceding the month of the flight.

If a pilot accomplishes the instrument recency experience in an aircraft, FFS, FTD, or a combination, then § 61.57(c)(1)–(2) requires that, within the preceding 6 months, the pilot must have performed: (1) Six instrument approaches; (2) holding procedures and tasks; and (3) intercepting and tracking courses through the use of navigational electronic systems.[10] If a pilot accomplishes instrument experience exclusively in an ATD, then § 61.57(c)(3) requires that, within the preceding two months, the pilot must have performed the same tasks and maneuvers listed previously plus "two unusual attitude recoveries while in descending V_{ne} airspeed condition and two unusual attitude recoveries while in an ascending stall speed condition." 14 CFR 61.57(c)(3). Section 61.57(c)(3) also requires a minimum of three hours of instrument recency experience when using an ATD, whereas no minimum time requirement applies when using an aircraft, FFS, or FTD to accomplish the instrument experience.

If a pilot accomplishes the instrument recency experience using an ATD in combination with using an FFS or FTD, then the pilot must—when using an ATD—perform the additional tasks but the "look back" period to act as PIC is six months rather than two months. 14 CFR 61.57(c)(5). The FAA stated in 2009 that the more restrictive time limitations and additional tasks were based on the fact that, at the time, ATDs represented new technology.

Since the ATD provisions were added to § 61.57 in the 2009 final rule, the FAA has received numerous inquiries regarding the terms used in the rule and what might be acceptable combinations when using various aircraft or training devices to satisfy the currency requirements.[11]

The FAA is proposing to amend § 61.57(c) to allow pilots to accomplish instrument experience in ATDs at the same 6-month interval allowed for FFSs and FTDs. In addition, the FAA is proposing to no longer require those pilots who opt to use ATDs exclusively to accomplish instrument recency experience to complete a specific number of additional hours of instrument experience or additional tasks (in existing § 61.57(c)(3)) to remain current. As discussed previously, significant improvements in technology for these training devices have made it possible to allow pilots to use ATDs for instrument recency experience at the same frequency and task level as FSTDs. The FAA believes that this proposal would encourage pilots to maintain instrument currency, promote safety by expanding the options to maintain currency, and be cost saving. As proposed, a pilot would be permitted to complete instrument recency experience in any combination of aircraft, FFS, FTD, or ATD.

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[7] The FAA will continue to issue LOAs that allow ATDs to be used to meet other aeronautical experience requirements in parts 61 and 141, including aeronautical experience for pilot certificates and ratings. Currently, the FAA issues LOAs that allow pilots to credit the same amount of time in ATDs as is currently permitted by regulation in FSTDs when the rule is silent on ATD allowances.

[8] Legal Interpretation to Thomas Keller, August 6, 2010.

[9] The proposal would not change the existing requirement to reestablish currency by completing an instrument proficiency check under the requirements in § 61.57(d).

[10] A pilot whose instrument currency has been lapsed for less than six months may not act as pilot in command in IFR or weather conditions less than the minimums prescribed for VFR but may reestablish instrument currency by performing the tasks and maneuvers in § 61.57(c). If a pilot has failed to maintain instrument currency for more than six months (meaning it is more than six months since the pilot was instrument current), the pilot may reestablish instrument currency only by completing an instrument proficiency check under the conditions set forth in § 61.57(d). See *Pilot, Flight Instructor, and Pilot School Certification; Technical Amendment*, 76 FR 78141, 78142 (December 16, 2011).

[11] The FAA notes that it also received comments requesting clarification of the recency requirements to the "Aviation Training Device Credit for Pilot Certification" direct final rule (79 FR 71634, December 3, 2015) (Docket No. FAA–2014–0987, comments at FAA–2014–0987–0004, FAA–2014–0987–0022) and the similarly-titled notice of proposed rulemaking (80 FR 34338, June 16, 2015) (Docket No. FAA–2015–1846, comments at FAA–2015–1846–0034, FAA–2015–1846–0038, FAA–2015–1846–0055). *http://www.regulations.gov.*

3. Instrument Recency Experience for SICs Serving in Part 135 Operations

Section 135.245(a) requires a person serving as SIC in a part 135 operation conducted under IFR to "meet the recent instrument experience requirements of part 61[.]" The FAA is proposing to remove the reference to part 61 in § 135.245(a) and move the current instrument experience requirements in § 61.57(c)(1) and (2) to new § 135.245(c). The use of aviation training devices is not currently permitted to satisfy requirements in part 135. As such, it is more appropriate for the express requirement for instrument recency experience to be listed in part 135 rather than by reference to another rule part.

B. Pilot Certification, Training, and Pilot Schools

1. Second in Command Time in Part 135 Operations

Logging Second-in-Command Time

Currently, a person may log second-in-command (SIC) flight time[12] only when more than one pilot is required under the type certification of the aircraft or the regulations under which the flight is being conducted. 14 CFR 61.51(f).

In some situations, an airplane may be type certificated for operation either by two pilots or by a single pilot if the airplane has additional equipment specified in the operating limitations section of the FAA-approved airplane flight manual. For example, a Cessna 551 requires two pilots unless the airplane is equipped with an autopilot with approach coupling, flight director, boom microphone or headset mounted microphone, and a transponder ident switch on the pilot's control wheel. Likewise, certain operations conducted under part 135 require an SIC even when the type certification for the aircraft would not require a second pilot.[13] For example, under § 135.101 no person may operate an aircraft carrying passengers under IFR unless there is an SIC in the aircraft. Notwithstanding this requirement, the regulations allow a certificate holder to conduct this operation without an SIC provided the aircraft is equipped with an operative and approved autopilot system and its use has been authorized by the FAA. 14 CFR 135.105.

Over the years, several individuals have requested clarification from the FAA regarding whether a second pilot may log flight time when an aircraft is equipped for operation by a single pilot. The FAA responded that, because the aircraft—as equipped—requires a single pilot under the type certificate or regulation under which the flight is being conducted, then a second pilot is not a required flightcrew member. Accordingly, a second pilot may not log flight time under § 61.51(f) during those flights.[14] *See* legal Interpretation to Scott Nichols, April 2, 2009; Legal Interpretation to Jeff Karch, May 28, 1998; Legal Interpretation to Jeff Karch, March 9, 2000.

Petitions for Exemption

On December 18, 2007, Ameriflight, a part 119 certificate holder authorized to conduct operations under part 135, petitioned the FAA for an exemption from § 61.51(f)(2) to allow Ameriflight's SICs to log flight time during a flight that otherwise does not require an SIC.[15] Ameriflight indicated that, if granted, the exemption would apply "when an operator elects to assign a properly trained and checked SIC to a flight so that special SIC operations could be conducted if the need arose, flight time accumulated during such an assignment may be 'legally' logged by the SIC as SIC time, and meet the requirements of § 61.51(f)(2)."

In its petition, Ameriflight stated that granting this exemption would actively improve the level of safety because a properly trained and qualified SIC enhances safety in the cockpit by (1) providing a second set of eyes, (2) allowing for better implementation of crew resource management, (3) encouraging the use of standardized procedures, and (4) helping distribute flying tasks during periods of high workload. Ameriflight further stated that a grant of exemption would be in the public interest because SICs assigned to these operations would gain real-world line flying experience under supervision of a qualified PIC which it claimed was an important element in a smooth upgrade to PIC. Ameriflight also commented that future airline pilots currently below the § 135.243(c) threshold for PIC[16] would have an opportunity to gain experience far more useful to their careers than other currently available avenues, such as flight instruction, pipeline patrol, and traffic watch.

The FAA issued a partial grant of exemption to allow Ameriflight's pilots to log SIC time in part 135 operations that did not otherwise require an SIC for the purposes of upgrading from SIC to PIC in those operations. The exemption, which has since been renewed,[17] does not permit the flight time to be used to gain an additional certificate or rating under part 61 or to be logged as PIC flight time (even if the pilot is the sole manipulator of the controls of the aircraft). All pilots utilizing the exemption are required to complete the certificate holder's approved SIC training program including 3 hours of crew resource management training.

The pilots are also required to meet other part 135 experience, qualifications, and crew pairing requirements. Specifically, the SIC must hold a commercial pilot certificate with appropriate category, class, and instrument rating, if applicable. The SIC must complete the same part 135 pilot training requirements required for two-pilot crews necessary to conduct operations consistent with the certificate holder's operations specifications (Ops Specs).[18]

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[12] "Flight time" is defined, in relevant part, as "pilot time that commences when an aircraft moves under its own power for the purpose of flight and ends when the aircraft comes to rest after landing." 14 CFR 1.1. "Pilot time" is currently defined as "time in which a person (i) serves as a required pilot flight crewmember; (ii) receives training from an authorized instructor in an aircraft, flight simulator, or flight training device; or (iii) gives training as an authorized instructor in an aircraft, flight simulator, or flight training device." 14 CFR 61.1.

[13] For instance, no certificate holder may operate an aircraft without an SIC: (1) If the aircraft has a passenger seating configuration, excluding any pilot seat, of ten seats or more; or (2) the flight is conducted in a Category II operation. 14 CFR 135.99(b); 135.111. Part 135 has no exceptions to the SIC requirement during these operations.

[14] The FAA has indicated that an assigned SIC (though not required) may log flight time as PIC under § 61.51(e) as the sole manipulator of the controls of an aircraft for which the pilot is rated. The assigned PIC (unless he or she holds an airline transport pilot (ATP) certificate and is acting as PIC of an operation requiring an ATP certificate) would not be able to log flight time concurrently because, under § 61.51(e)(1)(iii), the PIC is not acting as PIC of an aircraft for which more than one pilot is required by the type certification of the aircraft or the regulation under which the flight is being conducted.

[15] Exemption No. 9770; Docket No. FAA–2007–0383. *http://www.regulations.gov.*

[16] Section 135.243(c) states that no person may serve as PIC of an aircraft under IFR unless, among other things, that person has "at least 1,200 hours of flight time as a pilot, including 500 hours of cross-country flight time, 100 hours of night flight time, and 75 hours of actual or simulated instrument time at least 50 hours of which were in actual flight [.]"

[17] The FAA granted the original petition for exemption on October 3, 2008, and issued extensions on October 29, 2010 (9770A), October 31, 2012 (9770B), September 30, 2014 (9770C), and October 29, 2014 (9770D).

In addition, Ameriflight is required under the exemption to meet certain recordkeeping requirements and outline all SIC ground and flight duties in its general operations manual and flightcrew operating manual.

To the extent that Ameriflight had petitioned to permit its pilots to log flight time to meet aeronautical experience requirements for pilot certification, the FAA denied that relief stating that the denial was based on a desire to maintain the integrity of the higher level airmen certification and rating requirements. The FAA granted partial relief because that relief was confined to operations conducted solely within a part 135 certificate holder's operation, and such flight time would only be used to gain experience that would allow an SIC to upgrade to a PIC position within part 135 operations. The FAA found that such experience has value in part 135 operations.

On February 7, 2013, Ameriflight petitioned the FAA to expand the relief provided in the original partial grant of exemption by again asking for relief to permit SICs who were not required by aircraft certification or the regulation under which the operation is conducted to log flight time to meet aeronautical experience requirements for pilot certification under part 61. Ameriflight restated its arguments regarding the value of the flight time and the benefit of building flight time under an experienced PIC. Ameriflight added that the relief was appropriate in light of Public Law 111–216 (August 1, 2010), which mandated FAA rulemaking to require SICs in part 121 operations to have an airline transport pilot (ATP) certificate.[19] Ameriflight stated that granting the exemption would close the experience gap between pilots with 300 flight hours and SICs who must meet the new 1,500 hour experience requirement to qualify for an ATP certificate by providing "richer and more varied flying" than was otherwise available.[20]

The FAA published a notice of the petition in the **Federal Register**. 78 FR 39824 (July 2, 2013). Thirty comments were submitted to the docket.[21] Most commenters supported Ameriflight's petition arguing that a two-pilot crew is safer than a one-pilot operation and the experience gained by the SIC is more valuable than experience gained through other methods such as banner-towing, pipeline, or power-line patrol. Other commenters noted other benefits such as mentoring by an experienced PIC, a second pair of eyes for safety, help in reducing single pilot workload, and the opportunity for hands-on experience that is difficult to obtain otherwise.

Eight commenters raised concerns about Ameriflight's petition including the possibility of part 135 operators exploiting and charging low-time pilots a fee to gain this SIC experience. Other commenters suggested that granting the relief was contrary to the new ATP certificate requirements and National Transportation Safety Board (NTSB) recommendations that are meant to increase the SIC qualifications for air carrier operations. One commenter stated that SIC flight time should not be allowed in aircraft type-certificated for single pilot operations.

The FAA denied Ameriflight's petition to expand the relief to permit pilots to log flight time for certification. Although the FAA believed that the petitioner and commenters raised valid points regarding the benefit of a second pilot in part 135 operations, Ameriflight did not need an exemption to place another pilot on board for increased safety. Further, the FAA stated that Ameriflight failed to demonstrate how it is unique to the general class of regulated entities and therefore somehow eligible for regulatory relief. The FAA has consistently denied petitions for exemption from certification requirements including those pertaining to flight time requirements. The FAA believes that any changes to the requirements for logging flight time for the purpose of meeting certification requirements are most appropriately achieved through notice and comment rulemaking.

Proposed Rule Change

Under certain conditions, the FAA believes that it would be appropriate to allow pilots in part 135 operations to log time in an airplane or operation that does not otherwise require an SIC.

The FAA is proposing to amend § 135.99 by adding paragraph (c) to permit a certificate holder to receive approval of an SIC professional development program (SIC PDP) via Ops Specs in order to allow the certificate holder's pilots to log time under this proposal. The FAA believes that a comprehensive SIC PDP can provide opportunities for beneficial flight experience that may not otherwise exist and also provide increased safety in operations for those flights conducted in a multicrew environment.

To ensure that the SIC PDP achieves these goals, the FAA has set forth in proposed § 135.99(c) the requirements for certificate holders, airplanes, and flightcrew members during operations conducted under an approved SIC PDP. In addition to the following discussion of the proposal, the FAA has placed a draft advisory circular (AC) in the docket to this rulemaking that provides additional guidance for part 135 operators regarding development and approval (via Ops Specs) of a SIC PDP. The FAA seeks comments on this proposed AC.

As proposed, under an approved SIC PDP, a certificate holder would have to be authorized to conduct operations under IFR in multiengine airplanes with dual controls and flight instruments. Because the FAA believes that it is important that the required flightcrew member (*i.e.*, the PIC) have immediate access to the flight controls at all times, the dual controls would not be permitted to include a throwover control wheel as proposed in § 135.99(c)(2)(i). The airplane would be required to have independent flight instrumentation for a second pilot that includes the following instrumentation: (1) Airspeed indicator; (2) sensitive altimeter adjustable for barometric pressure; (3) gyroscopic bank and pitch indicator (artificial horizon); (4) gyroscopic rate-of-turn indicator combined with an integral slip-skid indicator; (5) gyroscopic direction indicator (directional gyro or equivalent); (6) vertical speed indicator (rate-of-climb) for IFR operations carrying passengers; and (7) course guidance for en route navigation and instrument approaches. In addition, the SIC would need to have independent instrumentation required by the certificate holder's Ops Specs. The FAA acknowledges that the proposed instrumentation is not currently required for SICs who are required by regulation. The FAA believes, however, that the proposed instrumentation is the minimum necessary for an SIC assigned under an SIC PDP to be actively engaged as a pilot flying and pilot monitoring in both VFR and IFR conditions and would ensure that these SICs obtain the relevant type of multipilot, multiengine experience envisioned by Public Law 111–216. The FAA seeks specific comment on the impact of these proposed instrumentation requirements on part 135 operators who would be interested in obtaining approval of an SIC PDP.

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[18] Ops Specs are paragraphs written and issued to the operator to provide specific requirements for certain FAA approved operations.

[19] On July 15, 2013, the FAA published the final rule on Pilot Certification and Qualification Requirements for Air Carrier operations implementing these statutory mandates (78 FR 42324) (Pilot Certification rule). As a result of this action, an SIC in part 121 domestic, flag, and supplemental operations must now hold an ATP certificate and an airplane type rating for the aircraft to be flown. With a few exceptions based on military and academic experience, an ATP certificate requires that a pilot be 23 years of age and have 1,500 hours total time as a pilot. Further, to receive an ATP certificate with a multiengine class rating, a pilot must have 50 hours of multiengine flight experience and must have completed a new FAA-approved ATP Certification Training Program (CTP). To upgrade from SIC to PIC for a part 121 air carrier, the pilot must have logged at least 1,000 flight hours in air carrier operations.

[20] The FAA notes that 250 hours of flight experience are required for a commercial pilot certificate under § 61.129(a)–(b); the agency believes that Ameriflight referenced "300 flight hours" because a pilot typically would have completed more than the minimum 250 hours when hired by a certificate holder.

[21] Docket No. FAA–2007–0383. *http://www.regulations.gov.*

Consistent with existing obligations under part 135, certificate holders would be required to have: (1) A manual containing standard operating procedures (SOP) for conducting operations with a two pilot flightcrew and setting forth the duties and responsibilities of an SIC; (2) approved SIC training curriculums;[22] (3) approved flight instructor (aircraft) training curriculums; and (4) initial and recurrent crew resource management (CRM) training for any pilot assigned to an operation consisting of more than one pilot flightcrew member.[23] The assigned SIC would be expected to perform the functions normally assigned to an SIC in an aircraft requiring two flightcrew members, such as communications, navigation, flight management, briefing, departure, arrival, and approach procedures, inspections and checklists, and, at times, sole manipulator of the flight controls.

As proposed in § 135.99(d), certificate holders who are authorized to operate as a basic operator, single PIC operator, or single pilot operator would not be permitted to obtain approval to conduct an SIC PDP. These certificate holders—either by regulation or deviation—are not required to develop and maintain manuals that describe the procedures and policies to be used by the flight, ground and maintenance personnel. 14 CFR 135.21. In addition, these certificate holders are not required to establish and maintain an approved pilot training program under § 135.341 or employ certain management personnel (*e.g.*, Director of Operations, Chief Pilot) under § 119.69. Because of the limited size and scope of these certificate holders' operations, the FAA does not believe that they would provide the environment necessary to foster an SIC PDP.

The FAA is also proposing in § 135.99(c)(1) to require a certificate holder with an approved SIC PDP to maintain records for each pilot consistent with the requirements in § 135.63 and provide training and testing records upon request to any pilot who the certificate holder has assigned to serve as SIC under its program. Additionally, the certificate holder would be required to establish and maintain a data collection and analysis process that would permit the certificate holder and FAA to determine whether the SIC PDP is accomplishing its objectives. The proposed data collection and analysis process could be based off a certificate holder's existing voluntary safety management system or internal evaluation program. As proposed in § 135.99(c)(1)(iv), a certificate holder who obtains approval of an SIC PDP would be required to conduct annual standardization meetings for all flight instructors serving as PIC during operations conducted under an SIC PDP. The FAA believes that standardization meetings would provide an additional mechanism to assess the effectiveness of the SIC PDP and review performance of participating SICs.

Under proposed § 135.99(c)(4), an assigned PIC in an operation conducted under an SIC PDP must be an authorized part 135 flight instructor for the certificate holder. To serve as an assigned SIC under an SIC PDP, a pilot would be required to meet the same certification, qualification, training, checking, and testing requirements in part 135 as a required SIC.[24] Accordingly, an assigned SIC would be required to hold a commercial pilot certificate with appropriate category and class ratings and an instrument rating. 14 CFR 135.245. Because pilots serving under an SIC PDP would be exercising the privileges of a commercial pilot certificate, they would be required to hold a second class medical certificate. 14 CFR 61.23. A pilot logging time under this proposal would be required to complete the requirements of an approved SIC training and checking program for any airplane in which the pilot would serve. Because the pilot would be serving in a multicrew environment, this training would include crew resource management training required under § 135.330. An assigned SIC also would be required to complete any training required by the certificate holder's Ops Specs for the operation being conducted, such as operations in reduced vertical separation minimum airspace.

The FAA emphasizes that, under this proposal, an SIC assigned to duty under an SIC PDP would be subject to part 135 requirements as though the pilot were required by aircraft certification or regulation. For example, under the proposal, the assigned SIC would be subject to flight time and duty period limitations and rest requirements under subpart F of part 135. Under part 135, these requirements can differ based on the flightcrew complement. As such, a certificate holder would be expected to treat duty and rest periods for a two-pilot crew conducted under an SIC PDP no differently than those for pilots serving in operations requiring two pilots by aircraft certification or regulation. In addition, the FAA would consider a pilot assigned to serve as SIC under an SIC PDP to be a covered employee performing a safety sensitive function subject to drug and alcohol testing requirements in part 120.

The FAA emphasizes that the SIC PDP would be voluntary. This proposal would impose no new requirements on certificate holders conducting operations under part 135 if they choose not to seek approval of an SIC PDP. However, only pilots employed by a certificate holder that has an approved SIC PDP would be permitted to log SIC flight time in part 135 operations when a second pilot is not required by the aircraft certification or the regulation under which the flight is being conducted. If a certificate holder does not have an approved SIC PDP and assigns a second pilot to an operation that does not require two pilots, that pilot may not log flight time under § 61.51.

If conducted in accordance with an approved SIC PDP, the flight time accomplished by those pilots serving as SIC could be counted toward the total flight time required for an ATP certificate under §§ 61.159(a), 61.160, and 61.161.[25] As proposed in § 61.159(c)(1), pilots who log time under this provision would not be permitted to use the time to meet the more specific flight time requirements for ATP certification (*e.g.*, cross-country flight time, night flight time) set forth in § 61.159(a)(1) through (5).[26] Rather, a pilot would be required to satisfy these specific aeronautical experience requirements during his or her time as a required pilot flightcrew member. This limitation on applying time logged under this provision only toward the total time requirement for an ATP certificate is consistent with the current limitation for SICs and flight engineers in § 61.159(c). The FAA believes that by allowing this time to be used only toward total flight time requirements for the ATP certificate, it would promote an environment in which a pilot's career follows a progression within part 135 that includes the pilot serving as a PIC in part 135 operations before transitioning to an SIC position in a part 121 operation.

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[22] The FAA would require certificate holders who exclusively conduct operations that require only a PIC to obtain approval of an SIC training program consistent with the requirements for SICs under part 135.

[23] Because a certificate holder who elects to conduct operations with an SIC would still have the option to conduct operations with a single pilot, the FAA would require certificate holders to provide training on both single pilot resource management and crew resource management as part of the certificate holder's training and checking program.

[24] Consistent with current regulations, if a certificate holder is authorized under § 135.3(c) to comply with the applicable sections of subparts N and O of part 121 instead of the comparable requirements in part 135, the assigned SIC would be required to meet the certification, qualification, training and checking requirements required by subparts N and O of part 121, except for the airline transport pilot certification requirements in § 121.436. *See* 81 FR 1 (January 4, 2016).

In proposing this change to pilot time logging allowances, the FAA is acknowledging the value of the pilot experience gained by airmen who have been properly trained to serve as SIC in the air carrier environment. In Public Law 111–216, Congress directed the FAA to ensure that applicants for an ATP certificate have received flight training, academic training, or operational experience that will prepare the pilot to, among other things, function effectively in a multipilot environment, adhere to the highest professional standards, and function effectively in an air carrier operational environment. In addition, the Public Law directed that all part 121 flightcrew members must have an appropriate amount of multiengine flight experience, as determined by the Administrator.

The FAA believes, within an appropriate training and mentoring environment, this proposal would support the Congressional directive and provide an effective method to acquire experience for ATP certification and prepare pilots for a career as a professional pilot. The experience gained from working with and learning from a part 135 flight instructor in a crew configuration would create valuable experience. This proposal would provide an additional option for commercial pilots seeking to meet the minimum aeronautical experience requirements for the ATP certificate while also providing a strong foundational experience for a developing professional pilot.

The FAA is proposing to revise § 61.159(c)(1) to set forth the requirements for logging SIC pilot time in an operation that does not require an SIC by type certification of the aircraft or the regulations under which the flight is being conducted. Current § 61.159(c) (former § 61.145) was first added to the regulations in a 1969 final rule. 34 FR 17162 (October 23, 1969). Until that time, SICs were permitted to log only 50 percent of their flight time toward a certificate or rating. The 1969 final rule permitted SICs in part 121 operations to log 100 percent of their flight time in airplanes required to have more than one pilot by their approved airplane flight manual or airworthiness certificate.[27]

In 1973, the FAA revised § 61.51 (former § 61.39) to permit all SICs—not just those in part 121 operations—to log 100 percent of flight time as SIC in aircraft on which more than one pilot is required by the type certification of the aircraft or the regulations under which the flight is conducted. 38 FR 3156 (February 1, 1973). When the FAA expanded § 61.51 to include all SICs, it did not remove the more limited provision that applied only to part 121 SICs in § 61.159(c)(1). Because that paragraph provides the same allowance for logging SIC flight time as is currently reflected in § 61.51(f), the FAA is proposing to revise § 61.159(c)(1) to address the logging requirements for SICs in part 135 operations who are not required by type certification or the regulations under which the flight is being conducted.

The FAA is also proposing to revise the definition of pilot time in § 61.1 and the logging requirements in § 61.51(f) to reflect the allowance for SICs to log flight time in part 135 operations when not serving as required flightcrew members under the type certificate or regulations.[28] The FAA notes that, because International Civil Aviation Organization (ICAO) standards do not recognize the crediting of flight time when a pilot is not required by the aircraft certification or the operation under which the flight is being conducted, pilots who rely on flight time logged under an SIC PDP to meet the requirements for an ATP certificate must have a limitation on their ATP certificates indicating that they do not meet the PIC aeronautical experience requirements of ICAO. This limitation may be removed when the pilot presents satisfactory evidence that he or she has met the ICAO standards.

Because of the ICAO limitation, it is important that flight time logged under this proposal is accurately recorded in the pilot's logbook. For that reason, the FAA has proposed § 61.159(c)(1)(ii) which would require the PIC to certify in the SICs logbook that the flight time was accomplished under the requirements in § 61.159(c)(1). As currently happens, a designated pilot examiner, aircrew program designee, or FAA inspector when validating the pilot's flight time would be responsible for noting an ICAO limitation on a temporary airman certificate (Form 8060–4). In addition, the FAA is proposing to revise Form 8710–1 (Airman Certification and/or Rating Application) to include this time in the record of pilot time section.[29] The FAA is proposing to add a provision to § 61.39 that would require a pilot who has logged flight time under § 61.159(c)(1) to present a copy of the records required by § 135.63(a)(4)(vi) and (x) at the time of application for the practical test.

As proposed in § 61.159(c), an SIC logging time under this provision would not be permitted to log this flight time as PIC time even when he or she is the sole manipulator of the controls. The FAA is proposing, however, to revise § 61.51(e) to allow the part 135 flight instructor serving as PIC to log all of the flight time as PIC flight time even when the PIC is not the sole manipulator of the controls. Section 61.51(e)(1) permits a person who holds a sport, recreational, private, commercial, or airline transport pilot certificate to log PIC time when the pilot (1) is the sole manipulator of the controls of an aircraft for which the pilot is rated; (2) is the sole occupant of the aircraft, (3) is acting as PIC of an aircraft that requires more than one pilot by type certificate or the regulations under which the flight is being conducted, or (4) is undergoing an approved pilot-in-command training program and is performing the duties of pilot in command while under the supervision of a pilot in command. In addition, the holder of an ATP certificate who is rated to act as PIC may log all flight time while acting as pilot in command of an operation requiring an ATP certificate. 14 CFR 61.51(e)(2).[30] Without the proposed change to § 61.51(e), the part 135 flight instructor would not be permitted to log PIC flight time during those times when the SIC is the sole manipulator of the controls because the PIC of these operations would not be acting as PIC of an aircraft that requires more than one pilot.

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[25] The FAA is proposing to revise § 61.161 to permit flight time logged under an SIC PDP to be counted toward the 1,200 hours of total flight time required for an ATP certificate with a rotorcraft category helicopter class rating.

[26] As currently provided in the Ameriflight exemption, pilots logging time under this proposal would be permitted to use the flight time for the purpose of upgrading from SIC to PIC in part 135 operations. Exemption No. 9770D.

[27] That final rule also added a provision that permitted flight engineers to log a portion of their flight engineer time toward the flight hour requirements for an ATP certificate.

[28] The FAA also proposes to revise the definition of "pilot time" in § 61.1 to include training time from an authorized instructor in aviation training devices within the definition. The FAA likewise proposes to add aviation training devices to § 61.51(h) to accommodate the logging of training time in an aviation training device.

[29] The FAA anticipates it would revise FAA form 8710–1 as appropriate at the final rule stage to include a column or block where the total number of hours accomplished under § 61.159(c)(1) could be recorded along with the notice of the ICAO limitation.

2. Completion of Commercial Pilot Training and Testing in Technically Advanced Airplanes

Introduction

Under the current requirements, an applicant for a commercial pilot certificate with airplane category single engine class rating must accomplish 10 hours of flight training in a complex airplane[31] or in a turbine-powered airplane.[32] 14 CFR 61.129(a)(3)(ii), appendix D to part 141. In addition, the Commercial Pilot Practical Test Standards for Airplane (as well as the Flight Instructor Practical Test Standards for Airplane) require a pilot to use a complex airplane for takeoff and landing maneuvers and appropriate emergency tasks for the initial practical test for a commercial pilot certificate with an airplane category.[33]

Many pilots seeking a commercial pilot certificate in the airplane category take the initial practical test in a single engine airplane. Training providers have noted that there are far fewer single engine complex airplanes available to meet the practical test standards requirement, and the single engine complex airplanes that are available are older aircraft that are expensive to maintain. The FAA recognizes that accomplishing the required training in either a single engine complex airplane or turbine-powered airplane has become cost prohibitive for most flight schools.

Because § 61.45(b) requires a pilot to accomplish the practical test in an aircraft that is the appropriate category, class, and type (if applicable), pilots are not permitted to use a more readily available multiengine complex airplane during the single engine practical test at the commercial pilot level to accomplish the tasks and maneuvers that require a complex airplane.[34] Currently it is permissible for an applicant to take his or her initial commercial pilot practical test for the airplane category in the multiengine class and then seek an additional rating in the airplane single engine class, thereby avoiding the difficulty of furnishing a single engine complex airplane. However, the FAA notes that many pilots often do not apply for their initial commercial pilot certificate with a multiengine class rating because of the higher cost associated with gaining the aeronautical experience required by § 61.129(b)(3) and (4) in a multiengine airplane.

Related Rulemaking History

On August 31, 2009, the FAA published a NPRM in the **Federal Register** that proposed to replace the requirement for training in a complex airplane for commercial pilot applicants (both single engine and multiengine ratings) with a requirement for advanced instrument training. *Pilot in command proficiency Check and Other Changes to the Pilot and Pilot School Certification Rules* NPRM, 74 FR 44779. In discussing the proposed change, the FAA noted the complaints by training providers regarding the necessity to maintain older single engine complex airplanes. The FAA also acknowledged in the NPRM that general aviation aircraft manufacturers are no longer producing as many single engine airplanes with retractable gear but are instead producing aircraft with "glass cockpits,"[35] which are also referred to as technically advanced aircraft (TAA).[36]

The FAA received a variety of comments in response to the proposed change. Although several commenters supported the change based on the high cost of maintaining older single engine complex airplanes and the perceived value of requiring additional instrument training, other commenters opposed the change citing the potential for an increase in gear-up landing incidents and the fact that training in a complex airplane is essential for safety because most pilots will encounter a complex airplane during their careers. The FAA withdrew the proposed changes in the final rule citing the need to further analyze the comments received on the proposed revision. 76 FR 54096 (August 31, 2011). The FAA noted that it would consider the matter further and possibly publish an NPRM in the future.

Basis for Current Proposal

Since the 2011 final rule, various pilot associations have made public statements on behalf of their members, expressing disappointment in the agency's decision to withdraw the proposal set forth in the 2009 NPRM. Various individuals and pilot organizations have reiterated concern over the costs associated with the upkeep of aging complex single engine airplanes that are unavailable (or are cost prohibitive) due to the decrease or discontinuance of manufacture of these aircraft. The FAA has also received multiple exemption requests that seek relief from § 61.45(b) and the requirement to use a single engine complex airplane during the commercial and flight instructor practical tests. While these requests have been denied because they have not met the regulatory criteria for an exemption, they provide additional examples of ongoing industry concern over the lack of flexibility provided by the current requirement to furnish a complex single engine airplane for use during training and testing for these certificates and ratings.

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[30] Currently, pilots are required to hold an ATP certificate to act as PIC in part 121 air carrier operations. Additionally, pilots must hold an ATP certificate to serve as PIC in operations conducted under §§ 135.243(a)(1) and 91.1053(a)(2)(i).

[31] A complex airplane is defined as an aircraft with a retractable landing gear, flaps, and a controllable pitch propeller, including airplanes equipped with an engine control system consisting of a digital computer and associated accessories for controlling the engine and propeller. 14 CFR 61.1.

[32] This option was added to the regulations in 1997. *Pilot, Flight Instructor, Ground Instructor and Pilot School Certification Rules* final rule, 62 FR 16220, April 4, 1997. In the preamble to the NPRM, the FAA explained that "some commercial pilot applicants may wish to complete their training in turbine-powered airplanes, and some military pilots may not have demonstrated procedures pertaining to the use of a controllable pitch propeller. Because a turbine-powered airplane does not necessarily have a propeller, training and demonstration of flight proficiency in such an airplane does not satisfy existing requirements. However, a turbine-powered airplane clearly meets the regulatory intent of requiring an applicant to demonstrate proficiency in a relatively complex airplane." 60 FR 41160.

[33] The Commercial Practical Test Standards (FAA–S–8081–12C) for Airplane states that the applicant must furnish a complex airplane "unless the applicant currently holds a commercial pilot certificate with a single engine or multiengine class rating, as appropriate."

[34] *See* Legal Interpretation to Ian Robert Dean, February 15, 2013.

[35] "Glass Cockpits" refer to an aircraft with a flight deck LCD display system that incorporates a combined flight instrument information that includes navigation information. An example is a primary and multifunction flight display. (PFD and MFD systems). This can include an integrated autopilot. Reference Instrument Flying Handbook FAA–H–8083–15B Chp. 8 pg 18.

[36] The General Aviation Technically Advanced Aircraft FAA—Industry Safety Study published August 22, 2003, defines TAA as aircraft with a minimum of an IFR-certified GPS navigation system with a moving map display, and an integrated autopilot. Most include a primary flight display that integrates all of the following flight instruments together: Airspeed indicator, turn coordinator, attitude indicator, directional gyro, altimeter, and vertical speed indicator. Some TAAs also have a multi-function display that shows weather, traffic and terrain graphics. In general, TAAs are aircraft in which the pilot interfaces with one or more computers in order to aviate, navigate, or communicate.

With the prominence of airplanes equipped with glass cockpits (*i.e.*, TAA) in today's general aviation aircraft fleet, the FAA believes it is appropriate to permit the use of certain TAA to complete the training required in § 61.129(a)(3)(ii) and appendix D to part 141 as well as to meet the requirements of the commercial single engine airplane pilot and flight instructor practical test standards.

i. Definition of Technically Advanced Airplane

The FAA recognizes the emerging and continuing trend in general aviation aircraft manufacturing to produce most new aircraft with advanced avionics systems. The previously typical individual six-flight instrument configuration (six-pack) is becoming unavailable in current general aviation manufacturing. The NTSB safety study Introduction of Glass Cockpit Avionics Into Light Aircraft published in 2010 indicated that "the transition to glass cockpits in Federal Aviation Administration (FAA)-certified light aircraft" began in 2003 when Cirrus Design Corporation started delivering single-engine piston airplanes with electronic primary flight displays (PFD). Other manufacturers, including Cessna Aircraft Company, Piper Aircraft Incorporated, Mooney, and Hawker Beechcraft soon followed suit. The NTSB study further referenced General Aviation Manufacturers Association data showing that "by 2006, more than 90 percent of new piston-powered, light airplanes were equipped with full glass cockpit displays." [37] Indeed, the Cessna Aircraft Corporation has produced "glass cockpit only" piston driven aircraft since 2006. According to the General Aviation Manufacturers Association, these Cessna piston aircraft totaled 3,696, as delivered through 2012. Piper Aircraft Inc. also delivers almost exclusively glass cockpit configurations, except for some limited requests from international flight school customers for the previously traditional independent six-flight instrument configuration.[38]

This trend toward exclusive production of airplanes with glass cockpits (TAA) is due to an increase in demand for advanced avionics cockpit platforms by general aviation consumers.[39] At the same time, there has been a significant decrease in the production of single engine complex airplanes.[40] The FAA understands the decrease in single engine complex airplane manufacturing is due, at least in part, to newer airframe and power plant technologies that allow for aircraft to achieve higher performance (*e.g.*, airspeed, reduced fuel consumption, etc.) without the manufacturing and maintenance costs associated with a retractable gear system that is characteristic of a complex airplane. Cirrus Aircraft has delivered 5,326 aircraft with this fixed gear configuration as of 2012.[41]

To date, the FAA has primarily used the term "glass cockpits" when referring to airplanes equipped with these advanced avionics components such as a primary flight display (PFD) and multi-function display (MFD). For example, the *Instrument Flying Handbook* acknowledges that PFDs and MFDs "are changing not only what information is available to a pilot but also how that information is displayed." Moreover, the executive summary to the NTSB's Introduction of Glass Cockpit Avionics in Light Aircraft, provides that "in a span of only a few years, the cockpits of new light aircraft have undergone a transition from conventional analog flight instruments to digital-based electronic displays," which "integrate aircraft control, autopilot, communication, navigation, and aircraft system monitoring functions, applying technology previously available only in transport-category aircraft." [42]

In an FAA-Industry Safety Study published in 2003, the FAA defined TAA as "a General Aviation aircraft that contains the following design features: Advanced automated cockpit such as MFD or PFD or other variations of a Glass Cockpit, or a traditional cockpit with GPS navigation capability, moving map display and autopilot." [43] The FAA is proposing to require a certain level of complexity for TAA by proposing to define TAA in the regulations and, thereby, mandating certain functionalities when used for commercial pilot training and the practical test.

Notwithstanding the previous use of terms such as glass cockpit and electronic flight instrument displays, the FAA is proposing to adopt an updated definition of "technically advanced airplane" in § 61.1 based on the common and essential components of advanced avionics systems equipped on the airplane, including a PFD, MFD and an integrated two axis autopilot. These components would be required in order to ensure the TAA used to meet the aeronautical experience requirements for commercial pilots in § 61.129(a)(3)(ii) and appendix D to part 141, as well as the related practical test standards, as amended, have the necessary level of complexity comparable to the traditional single engine complex airplane.

TAA would be required to include a PFD that is an electronic display integrating all of the following flight instruments together: An airspeed indicator, turn coordinator, attitude indicator, heading indicator, altimeter, and vertical speed indicator. Additionally, an independent MFD must be installed that provides a GPS with moving map navigation system and an integrated two axis autopilot.[44] In general, the pilot interfaces with one or more computers in order to operate, navigate, or communicate. The proposed definition of TAA would apply to permanently-installed equipment and would not apply to any portable electronic device. The FAA recognizes the continuing advancements in aircraft avionics and the need for a pilot to be proficient with modern cockpit equipment and automation. As proposed, the FAA would define the term TAA as an airplane with an electronic PFD and an MFD that includes, at a minimum, a GPS moving map navigation and integrated two-axis autopilot.

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[37] General Aviation Airplane Shipment Report, End-of-Year 2006 (Washington, DC: General Aviation Manufacturers Association, 2007) indicates that 92 percent of the 2,540 piston airplanes delivered during 2006 were equipped with glass cockpit electronic flight displays.

[38] The six-flight instrument configuration includes a separate airspeed indicator, attitude indicator, altimeter, turn coordinator, heading indicator, and vertical speed indicator.

[39] An Aircraft Owners and Pilots Association Air Safety Foundation Special Report titled "Technically Advanced Aircraft—Safety and Training" states "virtually every newly designed transportation airplane is a TAA, including Lancair, Cirrus, Diamond, and the Adam 500 * * * Many owners are retrofitting their classic aircraft to convert them to TAA with IFR-certified GPS navigators and multifunction displays."

[40] The General Aviation Manufacturers Association Web site shows Cessna has not produced a piston engine retractable gear airplane since 1985 and Piper has produced only 28 piston engine airplanes with retractable gear since 2008 (16 being the Piper Arrow model). Production for Beechcraft is also at an all-time low for piston single engine airplanes with retractable gear.

[41] General Aviation Manufacturers Association published statistics (*http://www.gama.aero/*).

[42] NTSB Safety Study # SS–10/01.

[43] General Aviation Technically Advanced Aircraft, FAA-Industry Safety Study: Final Report of TAA Safety Study Team, *http://www.faa.gov/training_testing/training/fits/research/media/TAAFinalReport.pdf* (Washington, DC: Federal Aviation Administration, 2003).

[44] The MFD may also include additional capabilities such as depicting weather, traffic, terrain, navigation aids and airport information, but these capabilities are not necessary to meet the proposed definition.

In addition to adding a definition of TAA to § 61.1, the FAA is proposing to amend the existing training requirements to permit the use of a TAA instead of a complex or turbine-powered airplane by commercial pilot applicants seeking an airplane category single engine class rating. In addition to the regulatory changes, the FAA would revise the practical test standards for commercial pilot applicants and flight instructors seeking an airplane category single engine class rating.

ii. Amendment to Aeronautical Experience Requirement for Commercial Pilots

The FAA proposes to amend the current requirement found in § 61.129(a)(3)(ii) and appendix D to part 141 to complete 10 hours of training in a complex or turbine-powered airplane. As proposed, the FAA would permit a pilot seeking a commercial pilot certificate with an airplane category single engine class rating to complete the 10 hours of training in a TAA. With this amendment, a pilot seeking a commercial pilot certificate with a single engine class rating could complete all 10 hours in a complex airplane, a turbine-powered airplane, or a TAA, or could complete the 10 hours of training in any combination of these three airplanes. The FAA believes that demonstration of proficiency in an airplane that is electronically complex (*i.e.*, those that would meet the proposed definition of a TAA) will be comparable to the demonstration of proficiency in an airplane that is mechanically complex (*i.e.*, those that meet the current definition of a complex airplane).

Providing the TAA alternative to the training requirements for a commercial pilot certificate with an airplane category single engine class rating is appropriate because advanced avionics in TAA create a level of complexity that would be equal to or greater than the mechanical complexity found in traditional complex airplanes. The FAA contends that, as avionics continue to advance, the need for training and checking in other categories of aircraft equipped with advanced avionics systems will continue to grow. Further, the FAA emphasizes the importance of pilot and flight instructor proficiency in the advanced aircraft systems that are essential to the FAA's NextGen initiatives.[45]

Complex airplanes, turbine-powered airplanes, and TAA all require the commercial pilot applicant to have an understanding of aircraft systems that are more complicated than the aircraft systems found in more basic airplanes that most private pilots learn to fly. Operation of a complex airplane requires the pilot to perform advanced plans of action with the gear, flaps, and propeller control in certain phases of flight (such as takeoff, landing, and emergency procedures). Failure to perform the correct action in a complex airplane could result in a degradation of the safety of flight, such as a gear up landing or achieving maximum aircraft performance during climb after takeoff. Similarly, a TAA demands the pilot perform functions with the advanced avionics such as programing, entering flight plans and autopilot management. If not accomplished in an efficient, proper, and timely manner, there is the potential for a loss of safety during the flight.

As another example, the failure of the pilot to recognize and respond properly to a failure of either the PFD or the MFD at a critical phase of flight (especially during marginal VFR conditions or instrument meteorological conditions (IMC)) could result in the pilot losing situational awareness and possibly leading to loss of control jeopardizing the successful completion of the flight. The FAA believes that demonstrating proficiency when operating a TAA provides at least an equivalent level of complexity compared to a complex airplane. Indeed, newly hired operations aviation safety inspectors are required to complete three weeks of glass cockpit training (in TAA). This commitment to TAA training reflects the FAA's acknowledgment of the importance of developing skills, understanding the complexity, and demonstrating knowledge required to safely operate these airplanes.

The proposed amendments to § 61.129(a)(3)(ii) and appendix D to part 141 for single engine airplane ratings do not impose any new regulatory requirements on pilots or part 141 pilot schools.[46] The FAA believes that applicants for the commercial pilot practical test or flight instructor practical test for a multiengine rating need to continue to demonstrate skill and proficiency in a complex airplane as defined in the practical test standards. For that reason, the FAA is not proposing to make any related substantive revisions to the requirement to use a complex or turbine-powered airplane to complete the training required for multiengine airplanes in § 61.129(b)(3)(ii) and appendix D to part 141, other than clarifying amendments to eliminate redundancies in the current regulatory text. As noted, the vast majority of multiengine airplanes are complex, and there should be no significant burden on these applicants to provide a multiengine complex airplane for the multiengine practical test.

iii. Amendments to Commercial Pilot and Flight Instructor Practical Test Standards

The FAA notes that the proposed amendments to § 61.129(a)(3)(ii) and appendix D to part 141 necessitate coordinated revisions to the practical test standards for commercial pilots and flight instructors. The Commercial Pilot Practical Test Standards for Airplane require a pilot to use a complex airplane for takeoff and landing maneuvers and appropriate emergency tasks for the initial practical test for a commercial pilot certificate with an airplane category. Similarly, the Flight Instructor Practical Test Standards for Airplane require an instructor candidate to use a complex airplane for the performance of takeoff and landing maneuvers as well as appropriate emergency procedures.

Because an applicant for a commercial pilot certificate with an airplane category single engine class rating would no longer be required to complete training in a complex airplane, the FAA would revise the practical test standards to permit the use of a TAA in place of a complex or turbine-powered airplane during the single engine airplane practical test. The FAA would also revise the flight instructor single engine airplane practical test standards to permit the flight instructor applicant to use a TAA during the practical test. The FAA acknowledges that no longer requiring flight instructors seeking an airplane category single engine class rating to take the practical test in a complex airplane could result in a flight instructor not being evaluated specifically on complex airplane tasks and maneuvers.

Although under the proposed rule an instructor would not necessarily be evaluated during the practical test in a complex airplane, the FAA believes that the current training and endorsement required to act as PIC of a complex airplane set forth in § 61.31, in conjunction with the flight instructor's demonstrated knowledge of the fundamentals of instruction, is sufficient to ensure that type of training is provided effectively. The FAA notes that this ability to provide training without having been evaluated on a practical test is consistent with other § 61.31 endorsements including high performance aircraft, tailwheel aircraft, or high altitude operations.

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[45] FAA publication "NextGen Implementation Plan March 2012" or latest version. NextGen involves development of aviation-specific applications for existing, widely-used technologies, such as the Global Positioning System (GPS) and technological innovation in areas such as weather forecasting, data networking and digital communications.

[46] Although commercial pilots who hold airplane category single engine class ratings may not have been trained or tested in a complex airplane, they would be required to obtain training and an endorsement under § 61.31 in order to act as PIC of a complex airplane.

C. Flight Instructors With Instrument Ratings Only

Section 61.195 sets forth the limitations and qualifications for flight instructors. Under § 61.195(b), an instructor may not conduct flight training[47] in any aircraft for which the instructor does not hold a pilot certificate and flight instructor certificate with the applicable category and class ratings for the aircraft in which the training is being provided.[48] In addition to this requirement, § 61.195(c) requires that a flight instructor who provides instrument training for the issuance of an instrument rating, a type rating not limited to VFR, or the instrument training required for commercial pilot and ATP certificates must hold an instrument rating on his or her pilot certificate and flight instructor certificate that is appropriate to the category and class of aircraft used for the training.[49]

In the 2009 final rule, the FAA modified § 61.195(c) to clarify that, in order to provide instrument training required for commercial pilot or ATP certification, an instructor must have an instrument rating on his or her flight instructor certificate. 74 FR 42500, 42561. In disposing of comments to the NPRM, the FAA made the following statement: ". . . a flight instructor who does not hold the appropriate airplane multiengine rating on his/her flight instructor certificate and the appropriate airplane category multiengine class rating on his/her pilot certificate may not conduct instrument training in a multiengine airplane unless that flight instructor holds the appropriate airplane category multiengine class rating on his/her pilot certificate and flight instructor certificate." 74 FR 42500, 42536.

Shortly after the final rule published, the FAA received a request for legal interpretation seeking clarification of whether a flight instructor who holds only an instrument-airplane rating on his or her flight instructor certificate may conduct instrument training in a single or multiengine airplane if he or she holds those ratings only on his or her commercial pilot certificate but not on his or her flight instructor certificate. *See* Legal Interpretation to Taylor Grayson, January 4, 2010. The FAA responded that, under § 61.195(b), a flight instructor may not conduct instrument flight training without holding on his or her flight instructor certificate the appropriate category and class ratings for the aircraft in which the instrument flight training is provided.[50]

Despite this conclusion, FAA regulations permit a pilot to receive an initial flight instructor certificate with an instrument-airplane or instrument-helicopter rating without a corresponding category (airplane or rotorcraft) and class rating (single engine, multiengine, helicopter) on the flight instructor certificate.[51] In addition, the FAA has indicated in guidance[52] that a flight instructor may provide instrument training in any class of airplane with only an instrument-airplane rating on the flight instructor certificate so long as the person receiving instruction holds category and class ratings for the aircraft in which the instruction is being given. In such instances where guidance is inconsistent with a regulation, the regulation controls.

However, due to the confusion between the regulation and guidance regarding the qualifications of a flight instructor who is providing instrument training, the FAA is proposing to revise § 61.195. Specifically, the FAA is proposing to revise § 61.195(b) and (c) to permit a flight instructor who holds only an instrument-airplane rating or instrument-helicopter rating on his or her flight instructor certificate to provide instrument training in an aircraft, flight simulation training device (which includes full flight simulators and flight training devices), or in an aviation training device. As proposed, the authorized instructor and the pilot receiving instrument training would need to possess category and class ratings on their pilot certificates that are applicable to the aircraft in which the instrument training is accomplished. The flight instructor would need to hold the category and class rating on his or her pilot certificate appropriate to aircraft in which instrument training is given at the commercial pilot or ATP certificate level.

For example, a pilot who holds an airplane category single engine-land class rating on his or her private pilot certificate would be able to receive instrument training in a single engine-land airplane from a flight instructor who holds a single engine-land class rating on his or her commercial pilot (or ATP) certificate and an instrument-airplane rating on his or her flight instructor certificate. If the private pilot does not also hold a multiengine-land class rating, then in order to provide instrument training to that private pilot in a multiengine-land airplane, the flight instructor would be required to hold: (1) An instrument-airplane rating on his or her flight instructor certificate, and (2) an airplane category multiengine-land class rating on his or her flight instructor certificate.[53]

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[47] "Flight training" is defined as "training, other than ground training, received from an authorized instructor in flight in an aircraft." 14 CFR 61.1.

[48] To be eligible for a flight instructor certificate, a person must hold either: (1) A commercial pilot certificate with an aircraft category and class rating for the flight instructor rating sought and an instrument rating, or (2) an airline transport pilot certificate with an aircraft category and class rating appropriate to the flight instructor rating sought and instrument privileges appropriate to the flight instructor rating that is sought. As such, it is not possible for a person to hold a flight instructor certificate with a rating that the person does not first hold on his or her pilot certificate. If providing instruction in an aircraft that is type certificated, the instructor must hold the appropriate type rating on his or her pilot certificate. 14 CFR 61.195(b)(2).

[49] The FAA has distinguished instrument training for an instrument rating under § 61.65 and instrument training at the commercial pilot certificate level under § 61.129 from the training requirements for private pilots on "basic instrument maneuvers" under § 61.107 and "control and maneuvering of an airplane solely by reference to the instruments" under § 61.109. See Legal Interpretation to Taylor Grayson, July 6, 2010. A flight instructor does not need to hold an instrument rating to provide the training under §§ 61.107 and 61.109.

[50] *See* Legal Interpretation to Taylor Grayson, January 4, 2010, which states "a flight instructor must have an instrument rating on his flight instructor certificate that is applicable to the aircraft category for which the instrument training is provided." Additionally, Grayson states "under part 61.195 a flight instructor may not conduct instrument training in a multiengine airplane unless that flight instructor holds the appropriate airplane category multiengine class rating on his or her pilot certificate and flight instructor certificate.

[51] The powered lift category does not contain any corresponding class ratings, on either a pilot certificate or flight instructor certificate, and thus would not be affected by this rulemaking proposal.

[52] In Grayson, the FAA noted that FAA guidance was inconsistent with the current regulation. FAA Order 8900.1, Vol. 5, Chpt 2, Sec. 11, stated:

B. Class Ratings. Flight instructors who hold flight instructor certificates issued under part 61, which allow only instrument instructor privileges in airplanes, may give instrument flight instruction in any class airplane that is listed without restriction on their pilot certificate. Instructors holding only a helicopter instrument rating on their flight instructor certificate are limited to conducting instrument flight instruction in helicopters.

C. Ratings Limited to Instrument. Instructors with ratings limited to instrument may not give instrument flight instruction to students who do not hold category and class ratings in the aircraft used. This would be instruction for the addition of a rating that conveys other than instrument privileges. These instructors may not certify logbooks or recommend applicants for any aircraft category or class rating.

Allowing a flight instructor with only an instrument rating on his or her flight instructor certificate to provide instrument training when the flight instructor and the pilot receiving instrument training hold the appropriate category and class ratings on their pilot certificates provides adequate assurance that instrument training can be conducted competently and safely because the pilot and the instructor would have each previously demonstrated proficiency during a practical test with an examiner in the category and class of aircraft in which the instrument training is conducted.[54]

The FAA believes the fundamentals of instrument training (and the procedures) are a universal skill within a category of aircraft. The IFR procedures are fundamentally consistent within a particular category of aircraft and the same skills and rules apply to operate under IFR in the national airspace system. Obtaining a clearance, maintaining an attitude, altitude, speed, assigned course, following instructions from air traffic control (ATC), and other instrument skills are universal tasks for instrument flight in an aircraft. The ability of an instructor to teach instrument procedures in an aircraft for which he or she possesses an instrument rating on the flight instructor certificate would not be affected by the absence of aircraft category and class ratings on the flight instructor certificate.[55]

In addition, a flight instructor with an instrument rating on his or her flight instructor certificate has demonstrated the required knowledge on the fundamentals of instruction (*e.g.*, the learning process, elements of effective teaching, student evaluation and testing, course development, lesson planning and classroom training techniques). *See* 14 CFR 61.185(a)(1). Therefore, an instructor who holds only an instrument rating on his or her flight instructor certificate meets the same foundational criteria as a person who holds a flight instructor certificate with a category and class rating. This instructional knowledge is in addition to the knowledge and skills specific to the instrument rating and training tasks as provided in the Flight Instructor Instrument Practical Test Standards.[56]

D. Light-Sport Aircraft Pilots and Flight Instructors

1. Sport Pilot Flight Instructor Training Privilege

To be eligible for a pilot certificate, a person must receive training from an authorized instructor on certain areas of operation. For instance, an applicant for a private pilot certificate with an airplane category single engine class rating must receive flight training on "basic instrument maneuvers" and "control and maneuvering an aircraft solely by reference to the instruments." 14 CFR 61.107(b)(1)(ix); 61.109(a)(3). For that reason, a flight instructor authorized to provide flight training to a private pilot applicant (part 61, subpart H instructor) is evaluated during the flight instructor practical test on his or her instructional knowledge related to tasks and maneuvers performed solely by reference to the instruments.[57]

Conversely, basic instrument maneuvers are not an area of operation for which sport pilot applicants must receive flight training. 14 CFR 61.311. As such, a sport pilot instructor (part 61, subpart K instructor) is not evaluated during the practical test on his or her instructional knowledge related to basic instrument maneuvers.[58]

Notwithstanding this fact, there is a single circumstance under which a sport pilot must receive flight training on control and maneuvering solely by reference to the instruments. As with other student pilots, a sport pilot applicant must complete solo cross-country flight time to be eligible for the practical test for a sport pilot certificate. 14 CFR 61.313. Prior to accomplishing this solo cross-country flight time, sport pilot applicants must receive flight training from an authorized instructor on various maneuvers and procedures.[59] 14 CFR 61.93. For applicants for a single engine airplane rating, the maneuvers and procedures for a cross-country solo endorsement include flight training on control and maneuvering the airplane solely by reference to the instruments. 14 CFR 61.93(e)(12). Sport pilot applicants are not required to receive this specific training unless the airplane they are using to accomplish solo cross-country flight has a V_h (maximum speed in level flight with maximum continuous power) greater than 87 knots calibrated air speed (CAS). The FAA believes that sport pilot flight schools currently use flight instructors certificated under subpart H to provide training in these airplanes.

The FAA is proposing to authorize sport pilot instructors to provide training on control and maneuvering solely by reference to the instruments to sport pilot applicants receiving flight training for the purpose of solo cross-country requirements in an airplane that has a V_h greater than 87 knots CAS. Because a sport pilot instructor is not evaluated on this instructional knowledge, the FAA is proposing to require a sport pilot flight instructor to receive training and an endorsement from a flight instructor certificated under subpart H that affirms the sport pilot flight instructor has been found competent and is qualified to provide flight training on tasks and maneuvers performed solely by reference to the flight instruments. A subpart H instructor is necessary to provide the training and endorsement to a sport pilot flight instructor because the subpart H flight instructor is instrument rated and would be knowledgeable on the appropriate techniques for safely accomplishing flight by reference to the flight instruments. The FAA is not requiring a sport pilot flight instructor to receive this endorsement. The endorsement would only be required if the sport pilot flight instructor seeks the privilege of providing training to sport pilot applicants on maneuvering solely by reference to the flight instruments.

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[53] Likewise, if the pilot receiving instrument training held a multiengine-land class rating on his or her private pilot certificate but the flight instructor did not hold a multiengine-land class rating at the commercial pilot or ATP certificate level, the instructor—despite holding an instrument-airplane rating on his or her flight instructor certificate—would not be able to provide instrument training to that private pilot in a multiengine-land airplane.

[54] The FAA notes that, as is currently required, either the instructor or the pilot receiving instrument training must be able to act as pilot in command of the aircraft in which the training is provided, meaning that one of them must meet the recent experience requirements, have satisfied the necessary flight review and proficiency check, and hold any required endorsements (*e.g.*, complex airplane) for the aircraft.

[55] The FAA notes that a flight instructor who holds only an instrument rating on his or her flight instructor certificate is not authorized to provide training to meet requirements for category and class ratings. For example, a flight instructor with only an instrument rating who is providing instrument training required under § 61.129(a)(3)(i) for a commercial pilot certificate with an airplane category single engine class rating is not authorized to provide training to meet requirements that are specific to the category and class of airplane. As such, an applicant for a commercial pilot certificate who receives instrument training from an instrument only instructor would need to obtain training on the areas of operation listed in § 61.127 from an instructor who holds the appropriate category and class for the rating sought. Additionally, the instrument only instructor may not endorse an applicant for a commercial pilot certificate to take the practical test.

[56] FLIGHT INSTRUCTOR INSTRUMENT Practical Test Standards for AIRPLANE and HELICOPTER, FAA–S–8081–9D U.S. Department [sic] with Change 1.

[57] Flight Instructor Practical Test Standards for Airplane, FAA–S–8081–6D; *http://www.faa.gov/training_testing/testing/test_standards/media/FAA-S-8081-6D.pdf.*

[58] Sport Pilot Practical Test Standards for Airplane, Gyroplane, Glider, and Flight Instructor, FAA–S–8081–29; *http://www.faa.gov/training_testing/testing/test_standards/media/faa-s-8081-29.pdf.*

[59] To accomplish solo cross-country flight time, a sport pilot must obtain a student pilot certificate, receive flight training, and obtain an endorsement from an authorized instructor. 14 CFR 61.93.

The proposed endorsement would require the sport pilot flight instructor to receive a minimum of 1 hour of ground training and 3 hours of flight training.[60] The hour of ground training should emphasize a flight instructor's role, risk, and responsibilities in providing this type of training, evaluation and authorization. This basic instrument flight training should involve flight training for the purpose of giving instruction on control and maneuvering solely by reference to the instruments including straight and level flight, turns, descents, climbs, use of radio aids, and air traffic control directives. 14 CFR 61.93(e)(12). The FAA believes that the sport pilot flight instructor already has demonstrated proficiency in the fundamentals of instruction and course development. The endorsement would ensure that the sport pilot instructor has received appropriate training and assessment from an authorized Subpart H instructor to enable the sport pilot flight instructor to provide this training effectively and safely.

The FAA is proposing to add new § 61.412 that would establish training and endorsement requirements for those sport pilot flight instructors who want to provide training for sport-pilot applicants on control and maneuvering solely by reference to the flight instruments. This training is not required. Rather, the proposed change would allow a flight instructor with only sport pilot rating to provide all the training requirements for the sport pilot certificate. The FAA is proposing to revise § 61.415 by adding a new paragraph (h) to clarify that a sport pilot flight instructor may not conduct flight training on control and maneuvering an aircraft solely by reference to the instruments in an airplane that has a V_h greater than 87 knots CAS without meeting the requirements in proposed § 61.412. Because a sport pilot flight instructor is not currently authorized to provide this training, the FAA is not placing any new limitation on sport pilot flight instructors.

The FAA is proposing to make a corresponding change to § 91.109(c). Under that section, no person may operate a civil aircraft in simulated instrument flight unless the other control seat is occupied by a safety pilot who possesses at least a private pilot certificate with category and class ratings appropriate to the aircraft being flown. As such, a flight instructor with a sport pilot rating only (who holds no other pilot certificates) cannot currently act as safety pilot in simulated instrument flight. As proposed, the FAA would revise § 91.109(c) to permit a sport pilot instructor who has obtained the endorsement proposed in § 61.412 to serve as a safety pilot only for the purpose of providing flight training on control and maneuvering solely by reference to the instruments to a sport pilot applicant seeking a solo endorsement in an airplane with a V_h greater than 87 knots CAS. This serves the purpose of qualifying the sport pilot student for solo cross-country endorsement.

2. Credit for Training Obtained as a Sport Pilot

In the NPRM that proposed to establish the certification and qualification requirements for sport pilots, the FAA indicated that a pilot would be able to credit "training time and aeronautical experience logged as a sport pilot" toward the requirements for higher certificates in accordance with the logging requirements in § 61.51. 67 FR 5368, 5411 (February 2, 2002). Under § 61.51(h), a person may log training time when that person receives training from an authorized instructor in an aircraft, full flight simulator, or flight training device.[61]

A sport pilot instructor is authorized, within the limits of his or her certificate, to provide training and endorsements required for: (1) A student pilot seeking a sport pilot certificate; (2) a sport pilot certificate; (3) a flight instructor certificate with a sport pilot rating; (4) a powered parachute or weight-shift control aircraft rating; (5) sport pilot privileges; (6) a flight review or operating privilege for a sport pilot; (7) a knowledge test or practical test for a sport pilot certificate; (8) a private pilot certificate with a powered parachute or weight-shift-control aircraft rating or a flight instructor certificate with a sport pilot rating; and (9) a proficiency check for an additional category or class privilege for a sport pilot certificate or flight instructor certificate with a sport pilot rating. 14 CFR 61.413.

A sport pilot instructor, therefore, is not authorized to conduct training for a recreational pilot certificate or a private pilot certificate with airplane, rotorcraft, glider, or lighter-than-air category ratings. As such, under § 61.51(h), a pilot may not count flight training received from a flight instructor with only a sport pilot rating (subpart K instructor) towards the training requirements for a recreational pilot certificate or a private pilot certificate with category ratings other than powered parachute and weight-shift control aircraft.[62]

Under current regulations, however, if a pilot receives flight training in a light-sport aircraft[63] for a sport pilot certificate from an instructor who is also authorized to provide training for a private pilot certificate (subpart H instructor), the flight training provided by that instructor may "be credited toward the flight training requirements for a corresponding private pilot certificate, provided the instructor has met all applicable requirements necessary to provide that instruction at the private pilot level." *See* Legal Interpretation from Rebecca B. MacPherson to Tim Kern, July 24, 2009. By permitting this training time to be logged toward both certificates, the FAA has recognized that "many of the areas of operation on which an applicant for a sport pilot certificate is required to receive training are identical to those on which an applicant for a private pilot certificate is also required to receive training." Kern Interpretation.

In January 2011, the Aircraft Owners and Pilots Association, the Experimental Aircraft Association, the General Aviation Manufacturers Association and the National Association of Flight Instructors petitioned the FAA to allow pilots to credit the flight training received from a sport pilot instructor towards the training requirements for recreational pilot and private pilot certificates.[64] As suggested in the petition, flight training obtained while training for a sport pilot certificate would be eligible toward some of the hours of flight training required for these higher certificates.

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[60] Private pilot applicants have a similar requirement under § 61.109(a)(3) that requires 3 hours of flight training in a single-engine airplane on the control and maneuvering of an airplane solely by reference to instruments, including straight and level flight, constant airspeed climbs and descents, turns to a heading, recovery from unusual flight attitudes, radio communications, and the use of navigation systems/facilities and radar services appropriate to instrument flight.

[61] An authorized instructor for purposes of a sport pilot certificate includes a flight instructor certificated under subpart H of part 61 and a sport pilot instructor certificated under subpart K of part 61 provided the instructor holds the appropriate ratings for the aircraft in which the training is being provided.

[62] A pilot may, however, count hours accumulated as a sport pilot toward the flight time (as opposed to flight training) requirements for a higher certificate in accordance with the requirements in § 61.51.

[63] The requirements of a light-sport aircraft are defined in 14 CFR 1.1.

[64] *http://www.regulations.gov*; Docket No. FAA–2011–0138.

The petitioners stated that, by allowing training received in pursuit of a sport pilot certificate to be credited toward the training requirements of higher certificates, there would be greater incentive to pursue these higher certificates, thereby enhancing safety and encouraging involvement in a wider range of aviation activities.

Under current regulations, to obtain a sport pilot certificate with airplane category single engine (land or sea) class privileges, rotorcraft category gyroplane class privileges, or lighter-than-air category airship class privileges, a pilot must complete 20 hours of flight time including at least 15 hours of flight training from an authorized instructor on various areas of operation.[65] A sport pilot's flight training involves takeoffs and landings to a full stop, cross-country flight requirements, and solo flight time in a light-sport aircraft.[66] Finally, a sport pilot applicant must demonstrate proficiency on certain tasks and maneuvers during a practical test. 14 CFR 61.313.

An applicant for a recreational pilot certificate or a private pilot certificate must complete flight training on many of the same tasks and maneuvers required for a sport pilot certificate. In fact, many of the tasks and maneuvers outlined in the practical test standards for a sport pilot mirror the requirements in the practical test standards for recreational or private pilots. For example, ten of the twelve areas of operation required in the airplane practical test standards for private pilot are also listed in the airplane practical test standards for sport pilot. These areas of operation must be performed to identical proficiency standards. As with sport pilot applicants, the flight training for recreational and private pilot certificates includes cross-country flight time, takeoffs and landings to a full stop, and solo flight time. 14 CFR 61.99, 61.109.

Because of the common areas of operation and proficiency standards in flight training for sport pilots, recreational pilots, and private pilots, the FAA is proposing to revise § 61.99 and add new paragraph (l) to § 61.109 to allow flight training received from a sport pilot instructor who does not also hold a flight instructor certificate issued under the requirements in subpart H to be credited towards a portion of the flight training requirements for a recreational or private pilot certificate with airplane, rotorcraft, or lighter-than-air categories.[67] Any training received from a sport pilot instructor that would be credited under this proposal must be completed in an aircraft appropriate to the category and class rating for the recreational or private pilot certificate sought.

The following table reflects the current regulatory flight training hour requirements for recreational pilots and private pilots for specific categories and classes of aircraft. The last column reflects the sport pilot flight training hours that the FAA is proposing to allow a sport pilot to credit toward those higher certificates.

TABLE 2—CURRENT AND PROPOSED FLIGHT TRAINING HOUR REQUIREMENTS

Aircraft categories	Current recreational pilot requirements	Current private pilot requirements	Sport pilot training proposed to be credited
Airplane category—Single Engine	15 hours of training	20 hours of training	10 training hours.
Rotorcraft category—Gyroplane	15 hours of training	20 hours of training	10 training hours.
Lighter-than-air category—Airship	No rating at recreational pilot certificate level.	25 hours of flight training	12.5 training hours.
Lighter-than-air category—Balloon	No rating at recreational pilot certificate level.	10 hours of flight training including six training flights with an authorized instructor.	5 hours of flight training including three training flights with an authorized instructor.

In proposing this change, the FAA acknowledges that, notwithstanding the number of common training tasks, a private pilot applicant is trained and tested on certain tasks and maneuvers above those that are required for a sport pilot certificate including 3 hours of night training, 3 hours of flight by reference to instruments, operations at an airport with an operating control tower, and some additional cross-country time requirements.[68] For that reason, the FAA is proposing to permit a sport pilot to credit only a portion of the flight training toward higher certificates. The FAA is not proposing to expand the privileges of a flight instructor who holds only a sport pilot rating, other than as discussed previously in section III.D.1 of this preamble, which proposes to authorize sport pilot instructors to provide training on control and maneuvering solely by reference to the instruments to sport pilot applicants receiving flight training for the purpose of solo cross-country requirements, subject to certain conditions. Rather, the FAA is proposing to allow a pilot to credit a portion of flight training received from a sport pilot instructor toward the training hour requirements for higher certificates. As under current procedures, a designated pilot examiner would be required to validate an applicant's eligibility before administering the practical test.

The FAA believes that there are sufficient safeguards including successful completion of a knowledge test and practical test to prevent any reduction in safety. The applicant for a recreational or private pilot certificate would still be required to complete all the requirements for that specific certificate or rating, including the appropriate aeronautical experience requirements, aeronautical knowledge requirements, flight proficiency standards, and preparation for the practical test. For example, a person with a sport pilot certificate with an airplane category single engine-land class rating applying for a private pilot certificate with airplane category single engine-land class rating would need flight training from a subpart H flight instructor for private pilot tasks including, but not limited to, night, cross-country, tower operations, flight solely by reference to the flight instruments, and preparation for the practical test.

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[65] To obtain a sport pilot certificate with a lighter-than-air category balloon class privileges, a pilot must complete 7 hours of flight time that includes three flights with an authorized instructor. To obtain a sport pilot certificate with glider category privileges, a pilot must complete 10 hours of flight time including 10 flights with an authorized instructor if the pilot has less than 20 hours of flight time in a heavier-than-air aircraft.

[66] Light-sport aircraft used for sport pilot training function the same as other certificated aircraft. In fact, a person could use a light-sport aircraft to accomplish training for a private pilot certificate if he or she chose.

[67] The FAA notes this situation is different from logging requirements for higher certificate levels. Generally, a pilot may use all of his or her flight time to meet the total minimum flight hours for a certificate when applying for a higher pilot certificate. For example, a pilot who has 80 total flight hours when he or she passes the practical test for a private pilot certificate may count those 80 hours toward the 250 hours of flight time required to apply for a commercial pilot certificate. Training time accomplished prior to private pilot certification, however, may not be used to meet the training requirements for a commercial pilot certificate. *See* Legal Interpretation from Rebecca B. MacPherson to Richard Theriault, October 8, 2010.

[68] Night and instrument time are not required for balloon, powered parachute, or weight-shift control aircraft at the private pilot certification level.

In addition to completing the aeronautical experience requirements with a flight instructor certificated under subpart H, an applicant for a recreational or private pilot certificate would be required to receive a minimum of three hours of training within 60 days of the practical test from a flight instructor certificated under subpart H. A flight instructor certificated under subpart H would be required to conduct training on all the areas of operation for a private pilot certificate and certify that the applicant is prepared for the practical test. 14 CFR 61.103(f). Moreover, only a subpart H flight instructor could recommend the applicant for the recreational or private pilot practical test. Ultimately, the practical test provided by an FAA designated pilot examiner would provide confirmation that the pilot has achieved the appropriate level of proficiency required for the higher pilot certification.

The FAA believes the additional training required and provided by a subpart H instructor, and the requirement for the applicant to pass a knowledge test and practical test to the standards required for that higher certificate, would ensure an appropriate level of experience, proficiency and safety.

As an alternative to this proposal, the FAA considered allowing all training received from a sport pilot instructor to be credited by an applicant seeking a recreational or private pilot certificate. An applicant would still be required to obtain a minimum of three hours of training in preparation for the practical test (within the preceding 2 calendar months) from a flight instructor under subpart H, as well as be endorsed by a flight instructor under subpart H as being prepared for the required practical test. The FAA solicits public comment, and any associated data, on this alternative.

E. Pilot School Use of Special Curricula Courses for Renewal of Certificate

The FAA may issue an initial pilot school certificate to a provisional pilot school or may renew a pilot school certificate provided the applicant meets the requirements of § 141.5. Section 141.5(d) currently requires, within the preceding 24 calendar months, the pilot school applicant to have established a pass rate of 80 percent or higher on the first attempt for all knowledge tests leading to a certificate or rating, practical tests leading to a certificate or rating, or end-of-course tests for an approved training course specified in appendix K of that part before the FAA may issue or reissue a pilot school certificate. In addition, § 141.5(e) requires the pilot school applicant to have graduated at least 10 different people from the school's approved training courses within the previous 24 calendar months. If an applicant for renewal does not meet the quality of training requirements in § 141.5(d) and the recent training ability requirements in § 141.5(e), the FAA may issue a provisional pilot school certificate in accordance with the requirements in § 141.7.[69] 14 CFR 141.27(a)(3).

Section 141.53 prescribes the general procedures for a pilot school (or provisional pilot school) concerning the outline of each training course for which the school seeks FAA approval. Often these approved courses lead to a certificate or rating under part 61 or are specific courses set forth in appendix K to part 141 such as training for agricultural aircraft and rotorcraft external-load operations. Section 141.57 also permits a school to receive approval of a special curriculum course. The FAA has approved numerous special curricula courses under § 141.57 that do not lead to a pilot certificate or rating such as crew resource management, the use of night vision goggles, high performance aircraft training, complex airplane training, turbo-prop transition training, and tail-wheel training. While the FAA is able to approve these courses, and both provisional pilot schools and pilot schools are able to graduate students from these courses, they do not lead to a certificate or rating for the pilots nor are they listed in appendix K to part 141. Therefore, under § 141.5, the graduates that complete these special curricula courses currently may not be counted when calculating the 80 percent pass rate required for issuance or renewal of a pilot school certificate.

Although these special curricula courses do not result in a certificate or rating for the individual pilot, they do require the pilot school to develop a course curriculum, and an FAA Principal Operations Inspector must review and approve the course. In some instances the completion of the course leads to a required logbook endorsement such as a tail-wheel, complex, or high performance endorsement. In other cases, the course is designed to improve a pilot's skills in certain areas and environments such as crew resource management, aerobatics, or mountain flying. If a provisional pilot school is certificated on the basis of special curriculum courses alone, the school will not be able to meet the renewal criteria of § 141.5(d) because the courses do not involve testing for a certificate or rating and are not courses listed in appendix K of part 141.[70] The FAA believes there is a necessity to support part 141 pilot schools that provide instruction for special curriculum courses under § 141.57.

Therefore, the FAA is proposing to amend § 141.5(d) to allow part 141 pilot schools that hold training course approvals for special curricula courses to renew their certificates based on their students' successful completion of an end-of-course test for these FAA approved courses. This proposed change would expand the opportunity for pilot schools to maintain part 141 certification and reduce the number of exemption requests submitted to the FAA. The FAA developed part 141 to allow for expanded oversight and the promotion of structured pilot training courses. The Principal Operations Inspector who approves the special curricula course would provide continued oversight and validity of these programs, as is done with any course approved under part 141. Allowing pilot schools to renew their certificates based on special curricula course graduations promotes this type of organized training and FAA oversight of pilot training activities.

If a student fails the end-of-course test for that special curricula course, the student would be recorded as a failure for purposes of calculating the 80 percent pass rate. The FAA believes that this is reasonable due to the fact that special curricula courses do not contain the specific training requirements found in the appendices to part 141. The FAA proposes to modify § 141.5(d) accordingly.

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[69] Section 141.27 contains the standards for renewing a pilot school certificate. The FAA may renew a pilot school certificate if, among other things, the pilot school meets the "recent training ability and quality" of part 141.

[70] Some pilot schools have previously requested exemptions from § 141.5 in order to be eligible for the issuance or renewal of a pilot school certificate. The FAA has generally denied these petitions. One exemption was granted to a balloon pilot school that had graduated nine students from 22 different courses and had a 100% pass rate for the pilot certification of their students (Exemption No. 10155A). The exemption was granted due to the limited number of students that receive balloon pilot training and the continuing need for a balloon school in the area. Another exemption was granted to a pilot school in Guam on the basis that there were no other pilot schools in the geographic area (Exemption No. 10435).

Allowing this additional method of part 141 pilot school renewal would benefit schools that only provide special curricula courses, without requiring an additional certificate course approval that would add cost and complexity to the pilot school operation. Benefits would include promotion of FAA approved pilots schools and increase in available FAA-approved training courses.

The FAA notes that FAA web-based Operations Safety System (WebOPSS) authorizations are available for part 141 schools and can be a method of providing approvals for special curricula courses and other authorizations provided to pilot schools.

F. Temporary Validation of Flightcrew Members' Certificates by Part 119 Certificate Holders Conducting Operations Under Parts 121 or 135

Current regulations require a person who serves as a required pilot flightcrew member of a United States civil aircraft to have a pilot certificate in his or her physical possession or readily accessible in the aircraft when exercising the privileges of that certificate. 14 CFR 61.3(a). The regulations also require a person who serves as a required pilot flightcrew member to have an appropriate medical certificate and government-issued photo identification in his or her physical possession or readily accessible in the aircraft. 14 CFR 61.3(c). In the case of a lost or stolen airman certificate or medical certificate, § 61.29(e) permits a pilot to request a document conveying temporary authority to exercise certificate privileges, which may be carried as an airman certificate or medical certificate for up to 60 days. Requests for these temporary documents can be made to the FAA Aeromedical Certification Branch or the Airman Certification Branch, as appropriate.

For airman certificates, this request can be accomplished online through Airman Online Services [71] or by letter to the Airmen Certification Branch.[72] When using Airman Online Services, the Airman Certification Branch can immediately issue a document by fax or email that is valid for 60 days and provides temporary authority to exercise the privileges of a pilot certificate to an airman.

Although the temporary document obtained from the Airman Certification Branch through the Airman Online Services Web site also reflects the airman's medical certificate information, this document is not a sufficient verification of an airman's medical certificate. An airman still must obtain 60-day temporary authority of medical certification from the Aeromedical Certification Branch, which is only available by fax or mail.[73] Under the current process, a pilot can make a phone call during normal business hours requesting a temporary 60-day document for the medical certificate, which can be faxed to the airman. Currently there is no FAA online service available to request a temporary document confirming medical certification.

If a pilot does not have a pilot certificate (or a document issued under § 61.29 conveying temporary authority), medical certificate, and government-issued photo ID in his or her physical possession, a flight cannot be conducted with that person acting as PIC or SIC. Since 1992, the FAA has issued exemptions to part 119 certificate holders conducting operations under parts 121 and 135 to permit them to issue temporary verification documents to flightcrew members who do not have their airman certificates or medical certificates in their personal possession for a particular flight.[74] The FAA has determined that good cause exists to issue these exemptions to prevent cancelation of flights in situations where a pilot flightcrew member's pilot certificate or medical certificate is valid but not physically available. With the emergence of Airman Online Services, the FAA has added as a condition of these exemptions that the relief is intended for situations where the pilots may not have Internet access or other means to expeditiously receive a document from the FAA under § 61.29(e).

Under the terms of the exemption, a part 119 certificate holder may provide its pilots with a temporary 72-hour verification document when an airman certificate or medical certificate is lost, damaged, or destroyed. This method is known as the Air Carrier Certificate Verification Plan.[75] Issuance of a verification document to a pilot flightcrew member is based on information contained in the certificate holder's approved record system. The certificate holder's POI must approve the procedure.

Additionally, the FAA places certain conditions and limitations on a certificate holder as part of the exemption including, but not limited to: Requiring the pilot to carry a copy of the exemption onboard when the relief is utilized, ensuring an alternate method for proper identification of the pilot, requiring the pilot to comply with § 61.29(e) and obtain a replacement certificate after the 72-hour period has elapsed if the original certificate remains unavailable, and limiting the relief in the exemption to operations conducted entirely within the District of Columbia and the 48 contiguous States of the United States.

Since the exemption process is not the appropriate method to provide continuing relief sought by these certificate holders, the FAA is proposing to amend §§ 121.383(c) and 135.95 to allow part 119 certificate holders conducting operations under part 121 or 135 to provide their pilot flightcrew members a temporary verification document (valid for 72 hours) without the need of an FAA exemption. The FAA is also proposing to amend § 61.3(a) to permit the documents provided by certificate holders to be carried as an airman certificate or medical certificate, as appropriate. As amended, § 61.3(a) would permit flightcrew members to carry documents provided by a certificate holder only on flights conducted for the part 119 certificate holder including ferry flights to reposition aircraft. If the pilot flightcrew member's pilot or medical certificate remains unavailable after 72 hours, the pilot flightcrew member would be required to comply with the requirements of § 61.29 and request a 60-day temporary confirmation document from the Airman Certification Branch or the Aeromedical Certification Branch until a replacement certificate is issued and in the possession of that airman.

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[71] The FAA airman services Web site (*https://amsrvs.registry.faa.gov/amsrvsLogon.asp*) states that "* * * you may request temporary authority to exercise certificate privileges of a valid airman and/or medical certificate or verification of an expired flight instructor certificate in the form of a facsimile (FAX) or email. This authority will be valid for 60 days pending receipt of a permanent replacement certificate or reinstatement of an expired flight instructor certificate. Only one (1) on-line request for temporary authority can be obtained within any six (6) month period."

[72] When a request is made by letter, the Airman Certification Branch issues a replacement certificate rather than providing a document conveying temporary authority.

[73] Under § 61.29(b), a request for the replacement of a lost or destroyed medical certificate must be made by letter to the Department of Transportation, FAA, Aerospace Medical Certification Division, P.O. Box 26200, Oklahoma City, OK 73125, or in any other manner and form approved by the Administrator.*http://www.faa.gov/licenses_certificates/airmen_certification/contact_airmen_certification/*.

[74] Currently, there are 10 active exemptions granted for relief of § 61.3(a) and (c) to part 119 certificate holders. These exemptions include air carrier associations such as Regional Airline Association (RAA) (Exemption No. 5560, as amended) and Airlines for America (A4A) (Exemption No. 5487, as amended). RAA currently lists 26 air carrier members (*http://www.raa.org*) while A4A represents most mainline part 121 air carriers including Alaska Airlines, American Airlines, Hawaiian Airlines, JetBlue Airways, Southwest Airlines, United Airlines, UPS, and Federal Express (*http://www.airlines.org*). By including the participating members of RAA and A4A, there may be more than 65 part 119 certificate holders eligible to exercise the privileges of these exemptions for relief from § 61.3(a) and (c).

[75] 8900.1 Volume 5, Chapter 1, Section 7, paragraph 5–153 (C).

A temporary verification document issued by the certificate holder would remain a short-term solution for a period not to exceed 72 hours. Placing this 72-hour time limitation on the verification document issued by the certificate holder would ensure that the airman obtains an official document from the Airman Certification Branch or Aeromedical Certification Branch under § 61.29(e) when a document remains unavailable after 72 hours.

Consistent with the conditions and limitations set forth in the exemptions, the FAA is proposing that a certificate holder would be required to obtain approval from the Principal Operations Inspector to exercise this privilege. The FAA intends to establish a process within the web-based Operations Safety System (WebOPSS)[76] program to facilitate approval of the Air Carrier Certificate Verification Plan. Under this proposed process, the Principal Operations Inspector would provide the authorization to issue a pilot certificate or medical certificate verification document through WebOPSS, which would permit the FAA to approve and oversee the authorization through established operations specifications procedures.[77] The FAA believes that public safety and interest would be preserved with the approval and oversight of the certificate holder's Principal Operations Inspector.

When these exemptions were first granted in 1992, access to the Internet was limited or unavailable and obtaining a temporary document quickly from the FAA was difficult. This fact has changed with today's information technology revolution. The FAA believes that the current proliferation of personal electronic devices with 24/7 Internet information and email access will likely keep the use of this new provision at a minimum. If this rule is finalized as proposed, the FAA will provide updated FAA Order 8900.1 guidance regarding how a certificate holder may obtain authority to provide its pilots a temporary 72-hour certificate verification document. The FAA would continue to provide relief through exemptions until a final rule is published and the certificate holder has obtained authority under the regulation from its Principal Operations Inspector.

The current exemptions issued to part 119 certificate holders conducting part 121 operations also provide exemption from § 63.3(a) to allow certificate holders to issue temporary verification documents to flight engineer flightcrew members who do not have their airman certificates or medical certificates in their personal possession for a particular flight. Accordingly, the FAA is proposing to amend § 63.3(a) to permit the documents provided by certificate holders to be carried as an airman certificate or medical certificate, as appropriate. As amended, § 63.3(a) would permit flightcrew members to carry documents provided by a certificate holder only on flights conducted for the part 119 certificate holder including ferry flights to reposition aircraft. If the flight engineer flightcrew member's airman or medical certificate remains unavailable after 72 hours, the flight engineer flightcrew member would be required to comply with the requirements of § 63.16 and request a 60-day temporary confirmation document from the Airman Certification Branch or the Aeromedical Certification Branch until a replacement certificate is issued and in the possession of that airman.

The FAA notes that, as proposed, this relief for pilots and flight engineers is available only for flights conducted entirely within the United States.[78] Article 29 of the Convention on International Civil Aviation requires that every aircraft engaged in international navigation shall carry "the appropriate licenses for each member of the crew." Temporary verification documents provided by the certificate holder from its training records would not meet the requirements of the Convention.

G. Military Competence for Flight Instructors

Issuance of a Flight Instructor Certificate

The requirements for the issuance of a flight instructor certificate are set forth in subpart H of part 61. These requirements include receiving training appropriate to the flight instructor rating sought, successful completion of a knowledge test, and demonstration of instructional proficiency during a practical test with an examiner. In the 2009 final rule, the FAA promulgated § 61.73(g) (74 FR 42555), which for the first time allowed a current or former military instructor or military examiner to obtain an FAA flight instructor certificate based on experience obtained in the military (*i.e.*, military competence) rather than meeting the requirements in subpart H.

Section 61.73(g) specifies that a current or former military instructor or examiner may apply for and be issued an initial flight instructor certificate with appropriate ratings or add a rating to an existing flight instructor certificate if he or she meets the following requirements:[79]

- Hold at least a commercial pilot certificate with category and class ratings appropriate to the flight instructor certificate sought;
- Hold an instrument rating (or have instrument privileges) on his or her pilot certificate appropriate to the instructor rating sought;
- For applicants that currently do not hold a flight instructor certificate, pass a knowledge test on the aeronautical knowledge areas listed under § 61.185(a);[80]
- Present a record that shows the person is or was qualified as a U.S. Armed Forces military instructor pilot or pilot examiner appropriate for the flight instructor rating sought;
- Present a record that shows the person completed a U.S. Armed Forces instructor pilot or pilot examiner training course and received an aircraft rating qualification as a military instructor pilot or pilot examiner that is appropriate to the flight instructor rating sought; and
- Present a record that shows that person passed a U.S. Armed Forces instructor pilot or pilot examiner proficiency check in an aircraft as a military instructor pilot or pilot examiner that is appropriate to the flight instructor rating sought.

The 2009 final rule did not impose any time restrictions for the qualifying military events described by

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[76] WebOPSS is a web-based program for issuance of operations specifications (OpSpecs) to 14 CFR part 119, 133, and 145 certificate holders, and part 129 operators.

[77] This would be in lieu of utilizing the FAA Airmen Online Services Web site that can provide temporary authority in the form of a facsimile (fax) or email. This also would apply to the temporary authority for the medical certificate provided by fax from the Aeromedical Branch.

[78] The exemptions limited the relief to those flights conducted entirely within the District of Columbia and the 48 contiguous States. As proposed, the relief is expanded to any flight conducted entirely within the United States.

[79] These requirements are paraphrased from the existing regulatory text found in § 61.73(g).

[80] The FAA requires applicants to satisfy this requirement by passing the Military Competence Instructor (MCI) knowledge test. This test is composed of 125 questions and requires the applicant to demonstrate knowledge in the areas of fundamentals of instructing, 14 CFR parts 61 and 91, attitude flying, and basic flight instruments.

§ 61.73(g).[81] The absence of time restrictions allows applicants to use military instructor experience obtained any time prior to the date of application as a basis for the issuance of an initial flight instructor certificate.

Renewal and Reinstatement of a Flight Instructor Certificate

The holder of a flight instructor certificate must renew that certificate every 24 calendar months to continue to exercise instructor privileges. Section 61.197 describes the methods by which a flight instructor may accomplish that renewal, including: (1) Completing a flight instructor refresher course (FIRC); (2) providing a record showing that the instructor served as a check pilot in an air carrier operation; (3) providing a record showing within 24 calendar months 80% of the flight instructor's students have passed a practical test on the first attempt (five or more recommendations); (4) completing a practical test for additional flight instructor rating; or (5) providing a record showing that within the preceding 12 months from the month of application the flight instructor passed an official U.S. Armed Forces instructor pilot proficiency check. 14 CFR 61.197(a). The 2009 final rule that established military instructor competency added military instructor pilot proficiency checks to the list of renewal options for a flight instructor certificate.

If a flight instructor fails to accomplish one of the renewal requirements, the flight instructor certificate expires, and the instructor may no longer exercise the privileges of that certificate until it is reinstated. To reinstate an expired flight instructor certificate, a person must pass a practical test for a previously held instructor rating or a new rating.[82] 14 CFR 61.199. Special Federal Aviation Regulation (SFAR) 100–2 provides the only other avenue by which to reestablish the privileges of an expired flight instructor certificate. Under that provision, a person who served in a U.S. military or civilian capacity outside the United States in support of a U.S. Armed Forces' operation is eligible for renewal of an expired flight instructor certificate, provided the instructor completes one of the renewal requirements in § 61.197 within six calendar months of returning to the United States.

The Proposed Rule

Since the final rule was published in 2009, the FAA has received numerous comments from military instructors regarding renewal and reinstatement of their flight instructor certificates. For example, some military instructors—who had obtained their initial flight instructor certificate by completing the requirements in subpart H rather than through military competence—wanted to use § 61.73(g) to reinstate their expired flight instructor certificates. Unless the expired flight instructor certificate can be renewed in accordance with SFAR 100–2, the express language in § 61.199 requires the holder of an expired flight instructor certificate to reinstate that certificate by completing a practical test. Some military instructors noted that it seemed inequitable to allow military instructors who had not instructed for many years to obtain an initial flight instructor certificate without being required to demonstrate proficiency while at the same time requiring an active military flight instructor (who had obtained that certificate by meeting the requirements of subpart H) to pass a practical test to reinstate his or her expired flight instructor certificate.

As another example, some military instructors have sought to renew their certificates based on the addition of a military instructor rating obtained outside the 12-month window set forth in § 61.197(a). The FAA has stated through policy that, under § 61.73(g), a military instructor is eligible to add a new rating obtained in the military to a non-expired flight instructor certificate; however, the flight instructor certificate retains the existing expiration date unless the applicant added the rating within the 12-month period preceding the date of the application for renewal. As such, a person who holds a non-expired flight instructor certificate and obtained a new rating through a military proficiency check conducted outside of the 12-calendar month period preceding the month of application for renewal retains the original expiration date on the certificate rather than obtaining a new certificate valid for 24 months. Many military instructors commented that the addition of a rating during any time prior to expiration of a flight instructor certificate should result in the applicant receiving a certificate that is valid for an additional 24 calendar months.

Based on these concerns, the FAA is proposing some changes to §§ 61.197 and 61.199 to accommodate renewal and reinstatement of flight instructor certificates by military instructors and examiners. The FAA is proposing to expand the 12-calendar-month timeframe noted in § 61.197(a)(2)(iv) to 24 calendar months. This would allow a military instructor who has passed a U.S. Armed Forces military instructor pilot proficiency check within the 24 calendar months preceding the month of application to be eligible to renew his or her certificate based on that proficiency check. Expanding this timeframe would be consistent with the requirements for other methods of renewal found in §§ 61.197(a)(2)(i) and 61.197(a)(2)(ii). The FAA believes that there would be no reduction of safety based on this proposal as these instructors will have demonstrated knowledge and skill during the same timeframe as is recognized for other methods of renewal. Consistent with current regulations, those instructors who apply to renew their certificates based on a military instructor proficiency check completed more than 3 months from the date of expiration of their current flight instructor certificate would receive a certificate with an expiration date 24 months from the date that the instructor submits his or her application for renewal. If the flight instructor applies for renewal within 3 months of the expiration date of the current instructor certificate, then the new expiration date would be 24 months from the current date of expiration.

The FAA is also proposing to clarify in § 61.197(a)(2)(iv) that a flight instructor would be able to renew his or her certificate by providing a record demonstrating that, within the previous 24 calendar months, the instructor passed a military instructor pilot proficiency check for a rating that the instructor already holds or for a new rating. Consistent with current practice, an eligible military instructor that applies for renewal under this provision would receive a flight instructor certificate that reflects a date 24 calendar months from the month that application for renewal is made to the FAA.

The FAA is also proposing to revise § 61.199(a) to permit a military instructor to reinstate his or her expired flight instructor certificate by providing a record showing that, within the previous six calendar months, the instructor passed a U.S. Armed Forces instructor pilot or pilot examiner proficiency check for an additional military rating. The FAA has accepted a flight instructor or examiner proficiency check conducted by the military to be equivalent to an FAA practical test for the purposes of issuing initial flight instructor certificates, adding ratings to existing flight instructor certificates, and for renewing flight instructor certificates. Allowing a flight instructor to reinstate his or her expired flight instructor certificate based on a military instructor proficiency check for an additional rating would be an extension of this precedent. Consistent with the existing requirements for reinstatement, a military instructor seeking to reinstate his or her certificate under the proposed provision would not be required to take an additional knowledge test.

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[81] For decades, FAA regulations have allowed military pilots to apply for FAA pilot certificates and ratings based on military competency. Prior to 2009, those military pilots who applied for an FAA pilot certificate more than 12 months after they were on active flying status were required to take and pass a practical test. Those military pilots who were on active flying status within 12 months of the date of application for an FAA pilot certificate were not required to take and pass a practical test. The 2009 final rule removed the time restriction from § 61.73 and required that military pilots take and pass only a knowledge test to obtain an FAA certificate, regardless of the time that had elapsed since they were on active flying status. The FAA introduced the military instructor competence provision in 2009 without any time restriction.

[82] The minimum tasks that must be demonstrated during a practical test are found in the Flight Instructor Practical Test Standards, as appropriate for the category being tested.

The expiration date of the reinstated flight instructor certificate would be 24 calendar months from the date of the proficiency check (as opposed to the date of the application). In addition, the FAA would require the applicant to apply for reinstatement within 6 calendar months of the proficiency check. The FAA believes that this would provide the applicant adequate time to schedule an appointment with either an FAA Aviation Safety Inspector or designee authorized to issue a flight instructor certificate based on military competence. Allowing the applicant 6 calendar months to apply for the reinstatement following the proficiency check is consistent with the 6-calendar-month allowance described in SFAR 100–2.[83] The 6-calendar-month requirement also ensures that FAA resources are being expended on a certificate that will at least be valid for 18 calendar months following the date of issuance.

The FAA is also proposing to add a temporary provision to § 61.199 (new paragraph (c)) that would allow military instructors who obtained their initial flight instructor certificate under subpart H to reinstate that instructor certificate based on military competence rather than by completing a practical test. Currently, those military instructors with an expired instructor certificate (that was obtained under subpart H) may only reinstate that certificate through an additional practical test. This situation is in contrast to military instructors that have never held a flight instructor certificate issued under subpart H who have the ability to receive an initial instructor certificate based on their military activity, even though their military activity may have been prior to the military activity of the individual that holds an expired instructor certificate. As noted previously, the FAA has received commentary that this situation, resulting from the current regulations, is inequitable.

This proposed temporary provision would provide a reinstatement method for military instructors and examiners who allowed their FAA instructor certificates to expire before the regulations permitted them to add a rating based on military instructor competence. This temporary provision in § 61.199(c) would allow for a military instructor or examiner that meets the following requirements to obtain a reinstated flight instructor certificate. As proposed, a military instructor or examiner who obtained his or her FAA flight instructor certificate before October 20, 2009 (the effective date of the current regulations that allow for the issuance of a flight instructor certificate based on military competence), would be required to: (1) Provide a record demonstrating that, since the initial flight instructor certificate was issued, the person passed a U.S. Armed Forces instructor or pilot examiner proficiency check for an additional military rating; and (2) pass the MCI knowledge test within 24 calendar months preceding the date of application for reinstatement. The FAA believes that requiring the applicant to pass the knowledge test ensures that the person has demonstrated recent knowledge of the areas found in the MCI test and is consistent with the requirements for a person seeking an initial flight instructor certificate based on military competence.

The temporary provision in § 61.199(c), as proposed, would remain in effect for one year to provide a military instructor or examiner with an expired FAA instructor certificate issued under subpart H enough time to reinstate their certificate based on military competence. The FAA believes that one year is a sufficient time frame to allow those individuals who would be affected by the provision to apply for a reinstated instructor certificate.

H. Use of Aircraft Certificated in the Restricted Category for Pilot Flight Training and Checking

Training and/or Checking in Restricted Category Aircraft

Basic certification requirements under 14 CFR part 21 state that an applicant is entitled to a type certificate for an aircraft in the restricted category for special purpose operations if the applicant shows that no feature or characteristic of the aircraft makes it unsafe when it is operated under the limitations prescribed for its intended use.[84] Additionally, the aircraft: (1) Must meet the airworthiness requirements of an aircraft category except those requirements that the FAA finds inappropriate for the special purpose for which the aircraft is to be used; or (2) is of a type that has been manufactured in accordance with the requirements of and accepted for use by, an Armed Force of the United States and has been later modified for a special purpose. 14 CFR 21.25(a). Special purpose operations[85] for restricted category aircraft are outlined in 14 CFR 21.25(b) and include, agricultural operations, forest and wildlife conservation; aerial surveying (photography, mapping, and oil and mineral exploration); patrolling (*e.g.,* pipelines, power lines, and canals); weather control (*e.g.,* cloud seeding); aerial advertising (skywriting, banner towing, airborne signs and public address systems); and any other operation specified by the FAA.[86]

The special purpose operation for which the FAA certificates a restricted category aircraft is set forth in the "Certification Basis" section of the Type Certificate Data Sheet. This section will list the applicable special purpose operation(s) as described in § 21.25(b) and provides the only operations for which the restricted category aircraft can be utilized.

Section 91.313 places express limitations on the operations that may be conducted in a restricted category aircraft. The FAA first proposed regulations establishing the operating limitations of aircraft certificated in the restricted category in an NPRM on January 18, 1964. 29 FR 477. In the preamble, the FAA explained that it was placing limitations on the use of restricted category aircraft because the airworthiness certification standards for these aircraft are not designed to provide the same level of safety that is required for aircraft certificated in the standard category. The final rule was published on February 18, 1965. 30 FR 2531.

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[83] The FAA notes that SFAR 100–2 addresses applicants who are unable to make a timely application due to being assigned outside the United States in support of U.S. Armed Forces operations. Under that provision, an applicant may meet any of the renewal requirements listed in § 61.197(a) to reinstate an instructor certificate. The proposed rule, however, would only permit reinstatement based on successful completion of a military proficiency check to add a military instructor rating but would apply to an applicant without regard to the location of their assigned duty.

[84] The applicant must also show that the aircraft complies with the applicable noise requirements under 14 CFR part 36.

[85] Already approved other special purpose operations under § 21.25(b)(7) are listed and further explained in FAA Order 8110.56 (as amended), Chapter 5.

[86] Criteria for the approval of "any other operation specified by the FAA" is outlined in FAA Order 8130.2 (as amended), paragraph 408h.

Section 91.39, later recodified as § 91.313,[87] provided "no person may operate a restricted category civil aircraft for any purpose other than the special purpose for which it is certificated" or "in an operation other than one necessary to accomplish the work activity directly associated with that special purpose." In 1968, the FAA revised § 91.39 to permit restricted category aircraft to be used to train flightcrew members in the special purpose operation for which the aircraft was certificated. 33 FR 12826 (September 11, 1968).

The FAA recently determined that the operating limitations set forth in § 91.313 restrict operators from conducting flights necessary for their PICs to obtain the type rating designations required by § 61.31(a). Practical tests for the addition of a type rating designation to a pilot certificate, training in preparation for such practical tests, or other flights necessary for the conduct of such practical tests (such as observations required for designated pilot examiner designation and surveillance) are outside the scope of the special purpose operation(s) for which these restricted category aircraft are certificated and not allowed under § 91.313.

The FAA recognizes that this determination creates a regulatory barrier for operators seeking to conduct flights to meet the type rating requirements of § 61.31 when a standard category aircraft in the same category, class, and type is not reasonably available to the operator. Several models of surplus military aircraft have entered service as civil aircraft certificated in the restricted category. Additionally, civil aircraft previously certificated in the standard or transport category have been modified to take advantage of new technologies or modified to add equipment designed to specifically perform a mission covered by the special purpose operations outlined in § 21.25(b). The FAA has certificated these aircraft in the restricted category under new type certificates. There are multiple examples of aircraft certificated in the restricted category for which there is no equivalent standard category aircraft including the civil model CH–47D, the Lockheed P–2 Neptune (P2V), and the Air Tractor AT–802A.

After the FAA informed operators that flights pertaining to pilot certification were not expressly permitted by § 91.313, several operators applied for an exemption to this section. These petitions for exemption sought relief to conduct pilot training for certification, practical tests (for type rating designations), and PIC proficiency checks required by § 61.58 in aircraft certificated in the restricted category.

Petitions for Exemption

On January 13, 2015, Billings Flying Service (Billings), a part 119 certificate holder authorized to conduct operations under parts 133, 135, 137, and 91 petitioned the FAA for an exemption from § 91.313(a)[88] to allow proficiency training, practical tests, or other flights necessary for its pilot employees to obtain a type rating designation in the S–61A and CH–47D rotorcraft.[89] Billings explained that it supports the United States government in fire suppression operations which requires training and check flights for its pilots. Pilots operating these aircraft for Billings are subject to the type rating requirements and proficiency check requirements prescribed in §§ 61.31 and 61.58.

In its petition, Billings stated that it has conducted training and proficiency checks for many years, and that such operations are safe, present no additional risk to the public, and are in the public interest. Billings further noted that it would perform no additional maneuvers or operations, above what it had conducted in the past, and that the training would be in the same location for training previously used by Billings. The petitioner asserted that conducting these same operations, including those that would be under the oversight of an FAA Designated Pilot Examiner, Aviation Safety Inspector, or Pilot Proficiency Examiner, present no additional risk and are in the public interest.

The relief granted in the exemption allowed Billings to operate a restricted category aircraft for a practical test necessary for its pilots to obtain a type rating designation as required by § 61.31. In addition, the exemption allowed Billings to train pilots in preparation for these practical tests. The FAA limited this relief to those pilots employed by Billings who will participate in a special purpose operation for which the listed aircraft are certificated. The exemption also granted relief for any flights necessary to designate a designated pilot examiner in the aircraft types in order to conduct these practical tests.

The FAA noted that, although § 91.313 does not allow restricted category aircraft to be used for training for certification and the practical test for type ratings, this restriction does not extend to proficiency checks accomplished by those pilots that already hold the requisite type rating and whose duties are to perform a special purpose operation authorized by § 91.313(a). These flights, such as flights needed to satisfy the PIC proficiency checks required by § 61.58 (and associated pilot proficiency examiner observations), are considered necessary to accomplish the work activity directly associated with the aircraft's special purpose.

In addition to providing relief from § 91.313(a), the FAA found that an exemption from § 91.313(c) was required for Billings to conduct the operations described in the petition. Section 91.313(c) prohibits a person from operating a restricted category civil aircraft carrying persons or property for compensation or hire. An operation that involves the carriage of persons or material necessary to accomplish the special purpose and an operation for the purpose of providing flight crewmember training in the special purpose operation are not considered to be the carriage of persons or property for compensation or hire.

A recent legal interpretation by the FAA recognizes an instructor who is being paid to provide flight training in an aircraft is operating the aircraft for compensation or hire regardless of whether he or she is acting as pilot in command.[90] The same principle applies to designated pilot examiners providing practical tests. The FAA did not intend to restrict Billings from providing compensation to those instructors providing training or examiners conducting practical tests in the aircraft covered under the exemption. However, the exemption limited Billings to conducting such flights for the purpose of training pilots who will be conducting special purpose operations on behalf of the operator, or, in the case of a designated pilot examiner, will be conducting practical tests for the operator's pilots.

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[87] The FAA recodified part 91 in 1989. 54 FR 34308 (August 18, 1989). No further amendments have been made since that time.

[88] Billings also requested relief from § 91.313(b) which allows an operator to consider flightcrew member training for the special purpose operation for which the aircraft is certificated to be an operation for that special purpose. The FAA determined that since Billings will not be conducting training directly related to the special purpose under this exemption but rather will be conducting training and testing necessary for certification, relief from § 91.313(b) was not required.

[89] Docket No. FAA–2015–0104. Exemption No. 11180.

[90] Legal Interpretation to Gregory Morris (October 7, 2014) (pertaining to limited category aircraft).

Subsequent to the grant of relief for Billings, the FAA received and granted several other petitions for exemption from § 91.313(a) and (c).[91]

Proposed Rule Change

The FAA believes that, under certain conditions, it would be appropriate to permit owners/operators of aircraft certificated in the restricted category to operate those aircraft for the purpose of providing pilot training and testing that leads to a type rating designation required by § 61.31(a) (and an ATP certificate[92] obtained concurrently with a type rating). This training and testing would be limited to pilots employed by an operator to perform the special purpose operation identified on the restricted category aircraft's Type Certificate Data Sheet. The FAA is also proposing to allow flights to be conducted in restricted category aircraft for the purpose of designating examiners and training center evaluators and qualifying FAA inspectors in the aircraft type and conducting oversight and observation of designated examiners and training center evaluators. As proposed in § 91.313(h), operators of restricted category aircraft would be permitted to conduct these operations by obtaining a letter of deviation authority (LODA) from the existing limitations in § 91.313. This process would be similar to the provision currently found in § 91.319(h) for aircraft certificated in the experimental category.[93]

The proposed § 91.313(h) would allow operators of restricted category aircraft to obtain a LODA for the purpose of conducting pilot training and testing that leads to a type rating designation required by § 61.31(a). As proposed, the LODA would permit operators to train and test only pilots employed by the operator who hold at least a commercial pilot certificate with the appropriate category and class ratings for the aircraft type. The FAA believes that requiring pilots to hold category and class ratings prior to the type rating practical test is appropriate because it would resolve the current regulatory obstacle faced by operators who need to provide their pilots with the proper ratings to perform special purpose operations while ensuring that historical limitations on the use of restricted category aircraft remain in place. As noted, the FAA has long acknowledged that restricted category aircraft "may not meet the airworthiness standards of standard category aircraft." Because of the special nature of the intended usage of these aircraft, the airworthiness certification standards for them are not designed to provide the same level of safety that is required for aircraft certificated in the standard category and the operating limitations set forth in § 91.313 are designed to compensate for this and provide the necessary level of safety for special purpose operations. 30 FR 2531 (February 18, 1965).

Because of these airworthiness considerations, the FAA finds it necessary to limit the additional restricted category operations to those that are described in this proposal. The FAA finds that the proposal would permit the flights that can only be conducted in a restricted category aircraft. Other flights, such as obtaining a commercial pilot certificate or adding a category and/or class rating, can be conducted in an aircraft with other airworthiness certificate categories (*e.g.,* standard category). The FAA finds that operations which can be accomplished in aircraft that have an airworthiness certificate outside of the restricted category should not be permitted by § 91.313.

In addition, proposed § 91.313(h) would permit the FAA to provide deviation authority to conduct operations in restricted category aircraft that are necessary to designate examiners and training center evaluators and qualify aviation safety inspectors in the aircraft type and provide continuing oversight and observation of designees and training center evaluators. These flights would enable the FAA to conduct the appropriate practical tests for operators and ensure that the FAA fulfills its obligations to ensure that designees and FAA inspectors are performing their duties appropriately.

As proposed in § 91.313(h)(4), an operator would be required to submit a request for deviation authority in a form and manner acceptable to the Administrator at least 60 days before the intended operations would be conducted. Although the FAA will provide additional guidance on the process for obtaining a LODA, the FAA anticipates that—as with LODAs for experimental aircraft—an operator would submit a request for deviation authority to the Flight Standards District Office having jurisdiction over the location where the requested training would take place.

The application for a LODA under proposed § 91.313(h) would include:

- A letter identifying the name and address of the applicant which includes the name and contact information of the person responsible for the operation, and details of the type of training and/or checking to be conducted;
- A description of each aircraft, FFS, FTD, or ATD used in any associated training (if applicable). This information would include the specific aircraft make(s), and model(s), and type (if applicable) by N-number, to be utilized;
- An aircraft configuration analysis including, but not limited to, flight deck, flight manual, operating limitations, required placards, and procedures.
- The qualifications and current employment status of the applicant for which the training and/or checking is needed.

If an operator obtains a LODA, the training and testing for a type rating would be conducted consistent with existing requirements in part 61. Specifically, the flight training must be conducted by an appropriately rated flight instructor in accordance with the requirements set forth for type ratings in §§ 61.63(d) or 61.157(b). Additionally, the pilot would be required to complete the practical test consistent with the standards outlined in the Practical Test Standards with a designee or FAA inspector who holds the appropriate authority. For this reason, the operator would be required to demonstrate during the application process that, as configured, the restricted category aircraft is capable of performing all required procedures and maneuvers necessary to meet the requirements of the applicable aircraft type rating practical test standards.

If the operator is granted deviation authority, the operator would be permitted to provide pilot flight training and/or testing in their restricted category aircraft consistent with the authority provided in the LODA.[94] As such, the LODA issued via WebOPSS would outline the specific training and testing functions that are authorized.[95] The FAA notes that LODAs are issued to specific operators not to individual aircraft. If an operator leases a restricted category aircraft to another operator, then both operators must hold a LODA to conduct flight training and testing for pilots employed to perform a special purpose operation. Additionally, an operator would be required to demonstrate that the executed lease agreement meets the requirements pertaining to operational control under part 91.

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[91] Petitioners include, but are not limited to, AAR Airlift Group, Inc. Docket No. FAA–2011–1270), Neptune Aviation Services (Docket No. FAA–2015–0073), Aero-Flite, Inc. (Docket No. FAA 2015–0543), Airborne Support Inc. (Docket No. FAA–2015–0110), Construction Helicopters, Inc. DBA CHI Aviation (Docket No. FAA–2015–0127), Sikorsky Aircraft Corporation (Docket No. FAA–2013–0476), and Withrotor Aviation (Docket No. FAA–2015–0123).

[92] The applicant would need to meet all applicable requirements of part 61 and successfully pass the practical test in accordance with the ATP Practical Test Standards for the applicable category and class, as appropriate.

[93] Section 91.319(h) allows the FAA to issue deviation authority to operators providing flight training for compensation or hire in experimental aircraft.

This proposed provision is not intended to allow operators to establish training schools utilizing restricted category aircraft for the purpose of issuing type ratings. Operators would only be granted deviation authority to conduct this training and testing for pilots that are employed by the operator and only when a type rating is required to complete the appropriate special purpose operation for which the aircraft was certificated and the operator is actively engaged in performing.

In addition to establishing a LODA process under proposed paragraph (h), the FAA is also proposing to revise § 91.313(b) to make clear that PIC proficiency checks and recent flight experience in a restricted category aircraft are permitted under § 91.313(a) when pilots hold the appropriate category, class, and type ratings and are employed by the operator to perform a special purpose operation. Under the proposal, properly rated pilots employed by the operators would be permitted to accomplish § 61.58 proficiency checks and recent flight experience requirements set forth in § 61.57. Additionally, the FAA is proposing to add relocation flights for maintenance to the list of operations considered necessary to accomplish the work activity directly associated with the special purpose operation. The FAA notes that other types of flight events not expressly allowed by the regulation would not be permitted and would require an exemption from the regulation.[96]

The FAA has also proposed a change to § 91.313(c) to ensure that instructors providing flight training and designees conducting practical tests under a LODA may accept compensation for these operations. Likewise, the FAA is proposing to revise § 91.313(d) to permit persons to be carried on restricted category aircraft if necessary to accomplish a flight authorized by LODA under paragraph (h).

Currently, if an operator desires to conduct any operation outside of the special purpose operation(s) for which the aircraft was certificated, the operator is required to submit a petition for exemption. Requirements for how to submit a petition for exemption and what information must be included in the submission are outlined in 14 CFR 11.63 and 11.81 respectively. Additionally, in accordance with § 11.63, the operator is required to submit the petition for exemption 120 days prior to the need for the exemption to take effect. If approved, the petition for exemption may have conditions and limitations that will require ongoing interaction between the operator and the FAA. If this rule is finalized as proposed, the requirement to submit a request for a LODA locally to the Flight Standards District Office will relieve the operator of the burden of petitioning the FAA for exemption. The LODA process would enable an operator to obtain approval at the local Flight Standards District Office and would reduce the time requirements associated with filing a petition for exemption.

I. Single Pilot Operations of Former Military Airplanes and Other Airplanes With Special Airworthiness Certificates

Section 91.531(a) prohibits a person from operating certain airplanes without a pilot who is designated as SIC. This restriction applies to large airplanes,[97] turbojet-powered multiengine airplanes for which two pilots are required under the type certification requirements for that airplane, and certain commuter category airplanes. The Administrator may issue LOAs for the operation of an airplane without an SIC "if that airplane is designed for and type certificated with only one pilot station." 14 CFR 91.531(b).

Certain former military aircraft and some experimental aircraft were designed to be flown by one pilot. Notwithstanding this fact, these airplanes are currently required to have an SIC in accordance with § 91.531(a) because they qualify as large airplanes. Furthermore, because these airplanes are not type certificated, they are not eligible for an LOA under § 91.531(b). Under the express language of the regulation, to obtain an LOA, the airplane must be both "designed for and type certificated with only one pilot station." [98]

On April 10, 2012, Experimental Aircraft Association, Warbirds of America, petitioned the FAA for an exemption from § 91.531 to permit the operation of large airplanes that possess special (experimental) airworthiness certificates that have been designed with only one pilot station, but which are not type-certificated, to be operated without a pilot who is designated as SIC.[99]

On July 20, 2012, the FAA granted this exemption from § 91.531(a)(1) to allow members of the Experimental Aircraft Association, Warbirds of America, to operate certain large airplanes without an SIC. The FAA granted relief from § 91.531(a) for pilots operating: (1) The "trainer" versions of former military airplanes originally designed with one pilot station, but which were modified with a second pilot (instructor) station merely for the purpose of pilot training; and (2) former military aircraft that had a single pilot station and a required non-pilot flightcrew member station. In support of the relief provided in the exemption, the FAA stated that these airplanes were approved by the military to be flown with only one pilot. These airplanes are maintained, operated, and inspected in accordance with operating limitations issued by the FAA under § 91.319(i) that set forth specific conditions for their safe operation. In addition, the pilots are required to demonstrate proficiency through practical testing that includes oral and flight testing specific to the particular airplane operated.

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[94] If the FAA has sufficient designees rated in a particular aircraft type, it may not be necessary to issue authority in an operator's LODA to conduct flights necessary to accomplish designee qualification, oversight and observation.

[95] WebOPSS is a web-based program for issuance of FAA authorizing documents to certificate holders and miscellaneous operators.

[96] Operators would still be permitted to conduct operations necessary to accomplish the work activity directly associated with the special purpose operation. In the 1965 final rule, the FAA provided examples of such operations which included allowing a farmer to conduct a flight for the purpose of showing which fields should be dusted or transportation of an insurance agent, surveyor, or inspector to the site of a special purpose operation. The FAA would also consider a flight conducted to relocate an aircraft to an area of a special purpose operation to be an operation necessary to accomplish the special purpose operation.

[97] Under 14 CFR 1.1, a large aircraft means an "aircraft of more than 12,500 pounds, maximum certificated takeoff weight."

[98] Section 91.531 was originally promulgated as § 91.213 (37 FR 14758; July 25, 1972). In 1989, part 91 was reorganized and § 91.213 was recodified as § 91.531. In the preamble to the final rule establishing § 91.213, the FAA stated that "to accommodate those airplanes having only one pilot station, such as former military airplanes certificated for special operations, § 91.213 as adopted permits an airplane having only one pilot station to be operated under an authorization from the Administrator" (37 FR 14762). Despite the express language of the rule, the preamble to the final rule did not distinguish between type certificated and non-type certificated former military airplanes designed for one pilot operations. The FAA does not believe that the rule's original intent was to preclude single pilot operations in former military aircraft that were designed for single pilot operations but which are not type-certificated. In addition, the FAA does not believe that single pilot operations should be precluded in some large experimental airplanes that are not type-certificated and that were not commonplace when § 91.213 was established.

[99] *www.regulations.gov;* Docket No. FAA–2012–0406.

The FAA is proposing to revise § 91.531(b) to allow certain large airplanes that are not type-certificated to be operated without a pilot who is designated as SIC, provided that those airplanes: (1) Were originally designed with only one pilot station; or (2) were originally designed with more than one pilot station for purposes of flight training or for other purposes, but were operated by a branch of the United States Armed Forces or the armed forces of a foreign contracting State to the Convention on International Civil Aviation with only one pilot.[100] The manufacturer's technical order for the airplane would indicate that the airplane was originally designed or modified to be flown with one pilot in accordance with § 91.9.

The proposed amendment to § 91.531 would also reorganize the section by placing all affirmative requirements in paragraph (a) and all exceptions thereto in paragraph (b). Related amendments to § 91.531, as proposed, would also eliminate inconsistencies, redundancies, and obsolete provisions, including the language currently found at paragraph (a)(2) and paragraph (d) of this section. By virtue of the airplane type certificate, large airplane, or commuter category crew requirements, the rule would now capture all circumstances when an SIC is required and the specific circumstances when an exception applies. The FAA notes that the affirmative requirement for an SIC on a multiengine turbojet aircraft at current paragraph (a)(2) is captured by the proposed amendment to § 91.531(a)(1) and therefore no longer needs to be listed separately.

The proposed amendment to § 91.531(a)(1) would clarify that the requirement for an SIC is determined by the minimum flightcrew requirements established in the operating limitations of the aircraft flight manual or the type certificate data sheet—regardless of whether the airplane is large or small. The existing SIC requirement for large airplanes, which would be reflected at § 91.531(a)(2) as proposed, remains necessary because some older airplanes do not contain minimum flightcrew requirements in the operating limitations of the aircraft flight manual or the type certificate data sheet.[101] The FAA continues to believe that large airplanes should be operated with an SIC unless the airplane has been type-certificated for single pilot operations. The FAA is proposing to revise the language in § 91.531(a)(2) to clarify that an SIC is required for large airplanes when the minimum flightcrew requirements are not included in the type certification of the airplane. The proposed revision would provide the necessary flexibility, in the event that the Aircraft Evaluation Group of the FAA determines a particular large airplane type could be flown safely without a SIC and adjusts the type certification requirements for that large airplane accordingly.[102]

As proposed, the FAA would eliminate the need for pilots to obtain an LOA under § 91.531(b) to operate large airplanes designed for single pilot operation without an SIC. The FAA believes that an LOA is unnecessary due to pilot certification requirements and aircraft operating limitations in § 91.319(i).

For example, to fly a large former military or experimental airplane, the PIC must first hold either a type rating (if the airplane is type certificated) or an experimental aircraft authorization (if the airplane is not type certificated). These type ratings and authorizations are reflected on a person's pilot certificate after successful completion of the requisite practical test. In the case of former military and experimental airplanes designed for operation by a single pilot, a type rating or experimental aircraft authorization on a pilot certificate is evidence that the pilot has demonstrated to the FAA during a practical test or evaluation that he or she is competent to fly the airplane without an SIC.

The FAA believes the current requirement to obtain an LOA for operation of these airplanes with a single pilot, in addition to the authorization on the pilot certificate, creates a redundancy without a demonstrable benefit. Therefore, rulemaking is appropriate to remove the redundant provision requiring an LOA for operational purposes and to allow these airplanes to be flown in single pilot operations. The FAA further notes that these airplanes must be flown in accordance with any applicable operating limitation, including any limitation issued pursuant to the provisions of §§ 91.319 and 91.9.

As proposed, pilots seeking to operate these airplanes (that are not type certificated) as a single pilot would still be required to obtain a temporary LOA from the FAA allowing the pilot to serve as PIC, if necessary, for completion of the practical test. Once the pilot completes the practical test successfully, the examiner would update the pilot certificate to reflect the authorization to operate these airplanes as a single pilot. Based on this proposal, the FAA believes the current requirement in § 91.531(b) to obtain a permanent LOA for operational purposes is no longer necessary with regard to large airplanes or turbojet-powered multiengine airplanes since the authorization is reflected on the pilot certificate. The FAA notes further that since the type certificate for commuter category airplanes referenced in current § 91.531(a)(3) permits single pilot operations, an LOA is not necessary.

J. Technical Correction and Nomenclature Change

While considering the regulatory changes proposed in this rulemaking, the FAA became aware of the need for a technical correction in appendix I to part 141, additional Aircraft category and/or class rating course. In paragraph (k), course for an airplane additional multiengine class rating, subparagraph (2) discussing the requirements for the commercial pilot certificate, the FAA noted that two paragraphs are currently designated (iv):

> (iv) One 2-hour cross country flight during nighttime conditions in a multiengine airplane and, a total straight-line distance of more than 100 nautical miles from the original point of departure; and
>
> (iv) Three hours of flight training in a multiengine airplane within 2 calendar months before the date of the practical test.

The FAA is proposing to correct this typographical error to renumber the paragraphs as (k)(2)(iv) and (k)(2)(v), respectively.

Further, while considering these regulatory changes, the FAA noted that the nomenclature regarding flight simulators has changed. The definition as found in § 1.1 references a "full flight simulator" whereas the regulations often use the older nomenclature "flight simulator." Therefore, in the sections the FAA has determined need to be revised as part of the proposed rule, the FAA is also proposing to remove the words "flight simulator" wherever they appear and replace them with the words "full flight simulator."

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[100] For example, the F–15 has been designed with a single seat (models A and C). Other F–15s have been designed with a second seat behind the pilot for training (models B and D) or a seat behind the pilot for a weapons system officer that may have a second set of flight controls (model E). Despite the fact that there are models that are designed with a second pilot station, all F–15s are designed to be operated by a single pilot.

[101] For example, the Lockheed L–18 Loadstar, Douglas DC–3, and the Ford 5AT Tri-Motor are large airplanes for which the type certification does not specify a minimum crew complement.

[102] The Embraer 505, SyberJet 30, and Cessna Citation 550 are examples of large airplanes that have been type certificated for operation without a SIC.

IV. Discussion of Proposed Effective Dates for Rule Provisions

The FAA recognizes that many of the provisions in this rule are relieving and others are voluntary. If this rule is finalized as proposed, the FAA will work to ensure that the amendments which would provide regulatory relief and flexibility become effective as soon as practicable, while ensuring that persons seeking to benefit from the relief, as well as the FAA, have adequate time to prepare for implementation of the changes that would be finalized. The following discussion summarizes the FAA's proposal for when the various amendments included in this proposed rule would become effective. As explained, each proposed amendment would be effective either 30, 60 or 180 days after publication of the final rule in the **Federal Register**, depending on the type and scale of implementation needed for persons to begin complying with the amended requirements.

Provisions Proposed To Be Made Effective 30 Days After Date of Publication of a Final Rule

The FAA proposes that the following provisions be made effective 30 days after publication of any final rule associated with this NPRM. By making these provisions effective 30 days after the date of publication in the **Federal Register**, the FAA intends to ensure that regulatory relief for provisions that do not require specific Principal Operations Inspector approval, training, or significant changes to occur are implemented as quickly as possible. By making the proposed definitions in § 61.1 effective at this time, the FAA would ensure clarity of future regulatory provisions and alleviate potential confusion. The FAA proposes a 30-day effective date for the following provisions:

- All proposed definitions that would be added to § 61.1
- Proposed substantive and clarifying amendments to § 61.51(g)(4)–(5) regarding instructor requirement when using an FFS, FTD, or ATD to complete instrument recency experience
- Proposed amendments to §§ 61.57(c) and 135.245 regarding instrument experience requirements
- Proposed amendments to § 61.195(b)–(c) regarding flight instructors with instrument ratings only
- Proposed amendment to § 61.99 and addition of § 61.109(l) regarding credit for training obtained as a sport pilot
- Proposed amendment to § 141.5(d) regarding pilot school use of special curricula courses for renewal of certificate
- Proposed substantive amendment to § 91.531 regarding single pilot operations of former military airplanes and other airplanes with special airworthiness certificates and clarifying amendments
- Proposed typographical correction to appendix I to part 141

Provisions Proposed To Be Made Effective 60 Days After Date of Publication of a Final Rule

The FAA proposes that the following provisions be made effective 60 days after publication of any final rule associated with this NPRM. By making these provisions effective 60 days after the date of publication in the **Federal Register**, the FAA intends to ensure that regulatory relief for provisions requiring some additional implementation time for the issuance and implementation of agency guidance, or for FAA Principal Operations Inspectors to take action, is available as soon as practicable. The FAA proposes a 60-day effective date for the following provisions:

- Proposed substantive amendments to § 61.129(a)(3)(ii) and appendix D to part 141 regarding the completion of commercial pilot training and testing in technically advanced airplanes and clarifying amendment to § 61.129(b)(3)(ii)
- Proposed amendments to §§ 61.412, 61.415(h) and 91.109(c) regarding sport pilot flight instructor training privilege
- Proposed amendments to §§ 61.197 and 61.199 regarding military competence for Flight Instructors

Provisions Proposed To Be Made Effective 180 Days After Date of Publication of a Final Rule

The FAA proposes that the following provisions be made effective 180 days after publication of any final rule associated with this NPRM. By making these provisions effective 180 days after the date of publication in the **Federal Register**, the FAA is acknowledging that these provisions are more complex to implement and will necessitate more extensive action by FAA Principal Operations Inspectors. These provisions affect part 119 certificate holders conducting operations under parts 91, 121 and 135 and will take more coordination and review on the part of both certificate holders and the FAA. This will include the creation and issuance of an authorization by the FAA (*i.e.* an Operations Specifications paragraph that would be issued to the carrier) describing the criteria and actions required for the allowance under the rule. The FAA proposes a 180-day effective date for the following provisions:

- Proposed amendments to §§ 61.39, 61.51(e)–(f), 61.159(a) and (c), 61.161, and 135.99(c) regarding logging flight time as a second in command in part 135 operations
- Proposed amendments to §§ 61.3(a), 63.3, 63.16, 121.383(c) and 135.95 regarding temporary validation of flightcrew members' certificates
- Proposed amendments to § 91.313 regarding use of aircraft certificated in the restricted category for pilot flight training and checking.

V. Advisory Circulars and Other Guidance Materials

To further implement this notice of proposed rulemaking, the FAA is proposing to revise or create the following Advisory Circulars and FAA Orders.

FAA Order 8900.1, Flight Standards Information Management System, Vol. 11, Chapter 10, Basic and Advanced Aviation Training Device, Sec. 1, Approval and Authorized Use under 14 CFR parts 61 and 141 guidance concerning ATD's would also be revised.

AC 135–PDP: This document would be a newly drafted AC (Part 135 SIC Professional Development Program) that would provide part 135 operators guidance on receiving FAA approval for training and qualifying pilots to act as an SIC and log that time for the ATP flight time requirements.

AC 61–65, Certification: Pilots and Flight and Ground Instructors would be revised to include endorsements and guidance pertaining to the sport pilot provisions. This would include the recommended endorsement for qualifying a sport pilot only instructor to give basic instrument flight instruction to sport pilot candidates only.

FAA Order 8900.1, Flight Standards Information Management System, Vol. 2, Air Operator, Air Agency Certification, Chapter 9, Certification of a Part 141 Pilot School guidance concerning pilot school 141 Special Curricula courses would be revised to permit those courses to be used for a pilot school to obtain a pilot school certificate.

FAA Order 8900.1, Flight Standards Information Management System, Vol. 5, Airman Certification, Chapter 1, Direction, Guidance and Procedures for

Parts 121/135 and General Aviation, Sec. 7, Amendments to Certificates and Replacement of Lost Certificates guidance concerning temporary validation of flightcrew certificates would be revised to permit a certificate holder to obtain approval to provide a temporary document verifying a flightcrew member's airman certificate and medical certificate privileges under an approved certificate verification plan set forth in the certificate holder's operations specifications. FAA Order 8900.1, Flight Standards Information Management System, Vol. 5, Airman Certification, Chapter 2, Title 14 CFR part 61 Certification of Pilots and Flight Instructors, Sec. 15, Issue a Title 14 CFR part 61 Pilot Certificate Based on Military Competence; and FAA Order 8900.2, General Aviation Airman Designee Handbook, Chapter 7, Designated Pilot Examiner Program, Sec. 19, Accomplish Designation/Issue Certificates as an ACR Employed Solely by a FIRC Sponsor, Paragraph 121, Flight Instructor Certificate and Ratings Issued on the Basis of Military Competence by an MCE and MC/FPE, and Paragraph 122, Certification of Graduates; and Sec. 20, Accomplish Designation/Conduct Functions as an MCE, FPE, MC/FPE, GIE, and FIRE, Paragraphs 123–127, Background, General Information for MCE, FPE, and MC/FPE Designations, Issuance of a U.S. Private Pilot Certificate and Ratings Based on Foreign Pilot Licenses, Pilot Certificates and Ratings Issued on the Basis of Military Competence by an MCE and MC/FPE, and Compliance with Other Provisions, respectively, guidance concerning flight instructor certificate renewal via military competence would be revised regarding the military flight instructor provisions included in this proposed rule.

VI. Section-By-Section Discussion of the Proposed Rule

In part 61, certification: Pilots, flight instructors, and ground instructors, in § 61.1, the definition of "pilot time" would be revised. New definitions would also be added to § 61.1(b) for "aviation training device" and "technically advanced airplane."

Section 61.3(a) would be revised to permit a pilot flightcrew member to carry a temporary document provided by a part 119 certificate holder under an approved certificate verification plan as a required pilot certificate for operating a civil aircraft of the United States.

Section 61.39 would be revised to add a provision that would require a pilot who has logged flight time under the SIC professional development program requirements of § 61.159(c)(1) to present a copy of the records required by § 135.63(a)(4)(vi) and (x) at the time of application for the practical test.

Section 61.51(e) would be revised to allow the part 135 flight instructor serving as PIC to log all of the flight time as PIC flight time even when the SIC is the sole manipulator of the controls and is logging time in an operation that does not require an SIC by type certification of the aircraft or the regulations under which the flight is being conducted. Section 61.51(f) would be revised to reflect the allowance for SICs to log flight time in part 135 operations when not serving as required flightcrew members under the type certificate or regulations. Section 61.51(g) would also be revised to allow a pilot to accomplish instrument experience when using an FAA-approved FFS, FTD, or ATD without an instructor present.

Section 61.57(c) would be revised to allow pilots to accomplish instrument experience in ATDs at the same 6-month interval allowed for FFSs and FTDs. In addition, the section would be revised to no longer require pilots, who opt to use ATDs for accomplishing instrument experience, to complete a specific number of additional instrument experience hours or additional tasks.

Section 61.99 would be revised to allow flight training received from a sport pilot instructor who does not also hold a flight instructor certificate issued under the requirements in subpart H of part 61 to be credited towards a portion of the flight training requirements for a recreational pilot certificate with airplane, rotorcraft, or lighter-than-air categories.

Section 61.109 would be revised by adding paragraph (l) to allow flight training received from a sport pilot instructor who does not also hold a flight instructor certificate issued under the requirements in subpart H of part 61 to be credited towards a portion of the flight training requirements for a private pilot certificate with airplane, rotorcraft, or lighter-than-air categories.

Section 61.129(a)(3)(ii) would be revised to allow a pilot seeking a commercial pilot certificate with a single engine class rating to complete the 10 hours of training, currently required in a complex or turbine-powered airplane, to also be completed in a TAA. Coordinated revisions would be made in § 61.129(b)(3)(ii) for clarity and consistency purposes only.

Section 61.159(c)(1) would be revised to set forth the requirements for logging SIC pilot time in an operation that does not require an SIC by type certification of the aircraft or the regulations under which the flight is being conducted.

Section 61.161 would be revised to permit flight time logged under an SIC PDP to be counted toward the 1,200 hours of total flight time required for an ATP certificate with a rotorcraft category helicopter class rating.

Section 61.195 paragraphs (b) and (c) would be revised to permit a flight instructor who holds only an instrument rating to provide instrument training without being required to hold aircraft category and class ratings on his or her flight instructor certificate.

Section 61.197(a)(2)(iv) would be revised to allow a military instructor who has passed a U.S. Armed Forces military instructor pilot proficiency check within the 24 calendar months preceding the month of application to be eligible to renew his or her FAA flight instructor certificate based on that proficiency check. The section would also be clarified to indicate that a flight instructor would be able to renew his or her certificate by providing a record demonstrating that, within the previous 24 calendar months, the instructor passed a military instructor pilot proficiency check for a rating that the instructor already holds or for a new rating.

Section 61.199 would be revised to permit a military instructor to reinstate his or her flight instructor certificate by providing a record showing that, within the previous six calendar months, the instructor passed a U.S. Armed Forces instructor pilot or pilot examiner proficiency check for an additional military rating.

Section 61.412 would be added to establish training and endorsement requirements for those sport pilot flight instructors who want to provide training for sport-pilot applicants on control and maneuvering solely by reference to the flight instruments.

Section 61.415 would be revised by adding new paragraph (h) to clarify that a sport pilot instructor may not conduct flight training on control and maneuvering an aircraft solely by reference to the instruments in an airplane that has a Vh greater than 87 knots CAS without meeting the requirements in proposed § 61.412.

In part 63, certification: Flight crewmembers other than pilots, § 63.3(a) would be revised to permit a flightcrew member to carry a temporary document provided by a part 119 certificate holder under an approved certificate verification plan as a required flight engineer certificate for operating a civil aircraft of the United States.

Section 63.16 would be revised to update the process for replacement of a lost or destroyed airman certificate or medical certificate and to add a process for replacement of a lost or destroyed knowledge test report.

In part 91, general operating and flight rules, § 91.109(c) would be revised to permit a sport pilot instructor who has obtained the proposed endorsement in § 61.412 to serve as a safety pilot only for the purpose of providing flight training on control and maneuvering solely by reference to the instruments to a sport pilot applicant seeking a solo endorsement in an airplane with a Vh greater than 87 knots CAS.

Section 91.313 would be revised to permit owners/operators of aircraft certificated in the restricted category to operate those aircraft for the purpose of providing pilot training and testing, to pilots employed by the operator to perform the special purpose operation, that leads to a type rating designation required by § 61.31(a) (and an ATP certificate obtained concurrently with a type rating). The section would also be amended to allow flights to be conducted in restricted category aircraft for the purpose of designating examiners and training center evaluators and qualifying FAA inspectors in the aircraft type and conducting oversight and observation of designated examiners and training center evaluators.

Section 91.531 would be revised to allow certain large airplanes that are not type-certificated to be operated without a pilot who is designated as SIC, provided that those airplanes: (1) Were originally designed with only one pilot station; or (2) were originally designed with more than one pilot station for purposes of flight training or for other purposes, but were operated by a branch of the United States armed forces or the armed forces of a foreign contracting State to the Convention on International Civil Aviation with only one pilot. The section would also be revised to eliminate redundancies and reorganized for purposes of clarification by placing all affirmative requirements for a SIC in paragraph (a) and all exceptions thereto in paragraph (b).

In part 121, operating requirements: domestic, flag, and supplemental operations, § 121.383(c) would be revised to permit a certificate holder to obtain approval to provide a temporary document verifying a flightcrew member's airman certificate and medical certificate privileges under an approved certificate verification plan set forth in the certificate holder's operations specifications.

In part 135, operating requirements: commuter and on demand operations and rules governing persons on board such aircraft, § 135.95 would be revised to permit a certificate holder to obtain approval to provide a temporary document verifying a flightcrew member's airman certificate and medical certificate privileges under an approved certificate verification plan set forth in the certificate holder's operations specifications.

Section 135.99 would be revised to add paragraph (c) to permit a part 135 certificate holder to receive approval of an SIC professional development program via operations specifications (Ops Specs) in order to allow their pilots to log time as SICs in an operation that does not require an SIC by type certification of the aircraft or the regulations under which the flight is being conducted. The paragraph includes requirements related to the certificate holder, aircraft, and pilots involved. Section 135.99(d) would state that certificate holders who are authorized to operate as a basic operator, single PIC operator, or single pilot operator would not be permitted to obtain approval to conduct an SIC professional development program.

Section 135.245 would be revised to remove the reference to part 61 in § 135.245(a) and move the current instrument experience requirements in § 61.57(c)(1) and (2) to new § 135.245(c).

In part 141, pilot schools, § 141.5(d) would be revised to add an end-of-course test for a special curricula course approved under § 141.57 to the list of activities a pilot school may use for the FAA to issue a pilot school certificate.

Appendix D to part 141, commercial pilot certification course, would be revised to allow commercial pilot certification courses to reflect the proposed relief in § 61.129(a)(3)(ii) that would permit a pilot seeking a commercial pilot certificate with a single engine class rating to complete the 10 hours of training in one, or a combination of, a TAA, a complex airplane, or a turbine-powered airplane.

Appendix I to part 141, additional aircraft category and/or class rating course, section 4, paragraph (k)(2) would be revised by renumbering two paragraphs, both of which are currently designated (iv).

VII. Regulatory Notices and Analyses

A. Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this proposed rule. We suggest readers seeking greater detail read the full regulatory evaluation, a copy of which we have placed in the docket for this rulemaking.

In conducting these analyses, FAA has determined that this proposed rule: (1) Has benefits that justify its costs; (2) is not an economically "significant regulatory action" as defined in section 3(f) of Executive Order 12866; (3) is not "significant" as defined in DOT's Regulatory Policies and Procedures; (4) would have a positive significant economic impact on a substantial number of small entities; (5) would not create unnecessary obstacles to the foreign commerce of the United States; and (6) would not impose an unfunded mandate on state, local, or tribal governments, or on the private sector by exceeding the threshold identified above. These analyses are summarized below, and a full discussion of the benefits and costs is provided in the regulatory evaluation included in the docket for this rulemaking.

Who Is Potentially Affected by This Rule?

The people who benefit from this rule would be pilots, student pilots, flight instructors, military pilots seeking civilian ratings, and pilot schools.

Assumptions

1. Analysis Time Period	5 Years
2. Discount Rate	7%

Total Benefits and Costs

This proposed rule has 12 separate provisions impacting different sections of parts 61, 63, 91, 121, 135, and 141 of the Federal Aviation Regulations. A separate analysis was conducted for each of the 12 provisions. From these analyses the FAA determined that the proposed changes were either minimal cost, had unquantified benefits which exceeded minimal costs, or had quantified cost savings. These analyses are discussed in detail in a separate regulatory evaluation. Throughout these analyses quantified cost savings once identified are discussed as benefits, and not negative savings. Over a five year analysis period the quantified benefits (cost savings) are about $112.2 million, or $99.0 million in present value at a 7 percent discount rate.

The following table shows the number and title of the twelve proposed rule provisions, the sections of the current Federal Aviation Regulations that would be affected by this proposed rulemaking, a summary of the impact for each of the twelve proposed provisions and the total cost savings, of the proposals with quantified benefits, over the analysis interval.

TABLE 3—SUMMARY OF THE PROPOSED RULE PROVISIONS

Provision	Sections affected	Summary	Total cost savings (benefits) for 5-year analysis period
Instructor requirement when using an FFS, FTD, or ATD to complete instrument recency.	61.51(g)(5)	Removes the requirement to have an instructor present when accomplishing flight experience requirements for instrument recency in an FAA-approved FFS, FTD, or ATD.	The cost savings benefits equal about $12.1 million or $10.6 million in present value at a 7 percent discount rate.
Instrument recency experience requirements.	61.57(c) 135.245	Reduces the frequency of instrument recency flight experience accomplished exclusively in ATDs from every two months to every six months. Reduces the number of tasks and removes the three-hour flight time requirement when accomplishing instrument recency flight experience in ATDs.	The cost savings benefits equal about $79.4 million or $69.6 million in present value at a 7 percent discount rate.
Second in Command for part 135 operations.	61.1 61.39(a) 61.51 (e),(f) 61.159(a),(c) 61.161 135.99(c)	Allows a pilot to log SIC flight time in a multiengine airplane in a part 135 operation that does not require a SIC.	The FAA considers this to be a minimum cost rule with positive, but difficult to quantify, benefits.
Completion of commercial pilot training and testing in technically advanced airplanes (TAA).	61.1 61.129(a)(3)(ii) appendix D to part 141.	Allows a TAA to be used to meet some or all of the currently required 10 hours of training that must be completed in a complex or turbine-powered airplane for the single engine commercial pilot certificate. TAA could be used in combination with, or instead of, a complex or turbine-powered airplane to meet the aeronautical experience requirement and could be used to complete the practical test.	The cost savings benefits equal about $9.7 million or $8 million in present value at a 7 percent discount rate.
Flight instructors with instrument ratings only.	61.195(b), (c)	Removes the requirement that instrument only instructors have category and class ratings on their flight instructor certificates to provide instrument training.	The cost savings benefits equal about $1.7 million or $1.5 million in present value at a 7 percent discount rate.
Sport pilot flight instructor training privilege.	61.412 61.415(h) 91.109(c)	Allows a sport pilot only instructor to provide training on control and maneuvering solely by reference to the flight instruments (for sport pilot students only).	Sport pilot flight instructors who choose to receive this endorsement have determined that they would be able to recoup this cost by providing training to sport pilot students.
Credit for training obtained as a sport pilot.	61.99 61.109(i)	Allows sport pilot training to be credited for certain aeronautical experience requirements for a higher certificate or rating.	If all 5,259 sport pilots choose to use the lower cost option, the cost savings would exceed $8.0 million. We have used $8.0 million as a one-time event in the benefit-cost analysis.
Include special curricula courses in renewal of pilot school certificate.	141.5(d)	Allows part 141 pilot schools to count FAA approved "special curricula" course completions (graduates of these courses) toward certificate renewal requirements.	This proposed rule provision provides potential unquantified benefits which exceed minimal compliance costs.
Temporary validation of flightcrew members' certificates.	61.3(a) 63.3(a) 63.16 121.383(c) 135.95	Allows a confirmation document issued by a part 119 certificate holder authorized to conduct operations under part 121 or 135 to serve as a temporary verification of the airman certificate and/or medical certificate during domestic operations for up to 72 hours.	This proposed rule would relieve both the FAA and stakeholders from the burden of the exemption process, which must be completed every two years. The cost savings, while real, are small and believed to be de minimis.
Military competence for flight instructors.	61.197 61.199	Allows the addition of a flight instructor rating based on military competency to "simultaneously qualify" for the reinstatement of that expired FAA flight instructor certificate.	The cost savings benefits equal about $1.4 million or $1.2 million in present value at a 7 percent discount rate.

TABLE 3—SUMMARY OF THE PROPOSED RULE PROVISIONS—Continued

Provision	Sections affected	Summary	Total cost savings (benefits) for 5-year analysis period
Restricted category aircraft training and testing allowances.	91.313	Allows an operator to request and obtain a letter of deviation authority to conduct training and testing and other directly related activities for employees to obtain a type rating in a restricted category aircraft.	The benefits will exceed costs for those who choose to comply.
Single pilot operations of former military airplanes and other airplanes with special airworthiness certificates.	91.531	Allows pilots to operate certain large and turbojet-powered airplanes (specifically former military and some airplanes not type certificated in the standard category) without a pilot who is designated as SIC.	The benefits will exceed costs for those who choose to comply.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration." The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

Most of the parties affected by this proposed rule would be small businesses such as flight instructors, aviation schools, fixed base operators, and small part 135 air carriers. There are over 1,000 part 135 air carriers alone. The general lack of publicly available financial information from these small businesses precludes a financial analysis of these small businesses.

The FAA believes that this proposed rule would have a significant positive economic impact. The provisions of this proposed rule are largely cost-relieving. In fact, this proposed rule is expected to provide $112 million in cost relief. Therefore, this proposed rule would have a positive effect on a substantial number of small entities.

Therefore, as provided in section 605(b), the head of the FAA certifies that this proposed rulemaking would result in a significant positive economic impact on a substantial number of small entities, as it imposes no new costs.

The FAA solicits comments regarding this determination.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

The FAA has assessed the potential effect of this proposed rule and determined that it would have only a domestic impact and therefore would not create unnecessary obstacles to the foreign commerce of the United States.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of $155.0 million in lieu of $100 million.

This proposed rule does not contain such a mandate. Therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. According to the 1995 amendments to the Paperwork Reduction Act, (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted these proposed information collection amendments to OMB for its review.

Overview: A majority of the provisions proposed in this NPRM do not impose an additional recordkeeping burden, but rather provide alternative methods of qualification when pursuing an airman privilege, certificate, or rating. The overall requirements and documentation remain the same for those provisions. Some of the provisions involve training and testing and do not require OMB supporting statements. Some of the provisions that are designated as voluntary are also considered without paperwork burden.

Title 5 CFR 1320.3(h) states that "* * * 'Information' does not generally include items in the following categories; * * * (1) Affidavits, oaths, affirmations, certifications, receipts, changes of address, consents, or acknowledgments; provided that they entail no burden other than that necessary to identify the respondent, the date, the respondent's address, and the nature of the instrument * * *." The proposed provision regarding the instructor requirement when using a FFS, FTD, or ATD to complete instrument recency experience would, among other things, remove the requirement that an instructor sign the pilot's logbook. This signature served as an instructor's affirmation of presence during the gaining of recency experience. Therefore, as the signature by the flight instructor merely documents the instructor's presence, it has not been considered an information collection, and the removal of its requirement does not constitute a burden reduction.

The FAA has identified three provisions with PRA implications that, if finalized as proposed, will require amended OMB supporting statements as listed below:

- Instrument recency experience requirements (information collection 2120–0021),
- Second in command for part 135 operations (information collection 2120–0021, 2120–0593, 2120–0039),
- Include special curricula courses in renewal of pilot school certificate (information collection 2120–0009).

Instrument Recency Requirements

The FAA is proposing to reduce the frequency of instrument recent flight experience accomplished exclusively in ATDs from every two months to every six months. The FAA is further proposing to reduce the number of tasks required to be performed and remove flight time hour requirements when accomplishing instrument recent flight experience in ATDs. While the proposed requirements are addressed in § 61.57(c), the requirement that such time be logged is addressed in § 61.51. This provision would reduce the requirements for persons using ATDs to make those requirements equivalent to the requirements for persons using aircraft, FFS, or FTDs. However, the FAA is not requiring that any person use any particular method to conduct this training. The FAA does not have specific data on which to base an estimate of the use of aircraft, FFSs, FTDs, or ATDs for the conduct of this time, as the FAA does not require or receive information regarding how the experience was gained by each pilot. Thus, while this proposed provision would reduce recordkeeping requirements for those persons who choose to conduct experience solely in ATDs, the FAA can only estimate whether, and by how much, that burden might be reduced for the overall pilot population with an instrument rating as the FAA has no information to make an initial determination of the use of ATDs, FTDs, FFSs, or aircraft. The FAA further emphasizes that the pilot would still be required to log the time, but notes that for some pilots the frequency of logging instrument currency would be reduced from every two months to every six months.

As discussed in the regulatory evaluation accompanying this NPRM, as of June 30, 2015, there were 305,976 instrument-rated pilots,[103] including ATP pilots, in the United States. As of June 23, 2015, the FAA estimates that 104,424 air carrier pilots[104] are exempted, leaving 201,552 instrument rated pilots that could benefit from this relief. Of these, the FAA estimates that only 50% (100,776) are maintaining their currency. Of this group it is likely that only 15% (15,116) use an ATD for currency and would potentially benefit from this relief. For those pilots, this would reduce the record keeping requirements of logging time from 6 times a year to two times a year, when logging instrument currency exclusively in an ATD. This provision does not change the requirement found in 14 CFR 61.51 that a pilot log his or her time while conducting these activities. As noted previously, the only difference is whether that time is logged in an ATD as compared with an FFS, FTD, or aircraft. Of the 15,116 pilots that would use an ATD exclusively to maintain currency, it is expected that the reduction in paperwork (logging time) would be 0.1 hours (6 minutes) × 4 times a year × 15,116 pilots = 6,046.4 hours saved annually. The FAA seeks comments, with supporting data, regarding the number of pilots using ATDs who might use this provision. This reduced burden when logging time for currency would be estimated in the OMB supporting statement for approved information collection 2120–0021, "Pilots, Flight Instructors and Ground Instructors."

Second in Command Time in Part 135 Operations

The FAA is proposing to allow pilots to log SIC time in multi-engine airplanes that do not require an SIC in a part 135 operation. This would be creditable total flight time in pursuit of an ATP certificate. The FAA has no basis on which to determine the number of pilots who might choose to take advantage of a SIC PDP sponsored by a part 135 operator that is approved to conduct a SIC PDP. In the regulatory evaluation, the FAA is seeking comments, with supporting data, regarding the number of pilots who might choose to take advantage of a program to become a SIC in a part 135 operation using a SIC PDP.

The FAA is proposing to amend § 135.99 by adding paragraph (c) to permit a part 119 certificate holder to receive approval of an SIC professional development program via operations specifications (Ops Specs) in order to allow the certificate holder's pilots to log time under this proposal. This Ops Spec would outline the pilot qualification, training, and recordkeeping requirements necessary to receive approval of the program. Ops Specs are paragraphs written and issued to the operator to provide specific requirements for certain FAA approved operations. The burden for initial approval would be reflected in this part 119 information collection.

The information collection already accounts for an average of 50 Ops Spec amendments per operator annually under § 119.51(c). The FAA has determined that this annual estimate of Ops Spec changes is too high and is currently 25 per year. This new estimate would include the modification that is necessary to conduct the SIC training program. The FAA estimates that each Ops Spec change takes 0.2 hours (12 minutes).

The current overall burden for the average number of Op Specs per year is less and will be reflected under § 119.51(c) of the supporting statement for approved Information collection 2120–0593, "Part 119 Certification: Air Carriers and Commercial Operators."

A certificate holder would submit for FAA approval of proposed curriculums for a SIC training that would need to meet the requirements specified in guidance (within an advisory circular) for the development of a SIC Professional Development Program. As discussed in the regulatory evaluation accompanying the NPRM, discussions with the Regional Air Cargo Carriers Association indicate that all of their air carrier members would be interested in providing such a program. RACCA has approximately 50 members who provide part 135 air cargo services. However, the FAA has no basis on which to estimate the number of air cargo carriers that might choose to either develop a SIC PDP, or implement and offer a SIC PDP based on existing operations. It is estimated that the operator would require approximately 40 hours to prepare and submit such new curriculums for FAA approval, or 20 hours to submit amended curricula. The FAA seeks comments, including supporting data, regarding the number of operators who might choose to use this provision annually, and whether those operators already have training curricula in place or would need to develop new curricula to meet the proposed requirements.

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[103] Source: Comprehensive Airmen Information System (CAIS).

[104] Source: SPAS NVIS Air Operator Record List, 6/23/2015.

This change would be reflected in the supporting statement for approved information collection 2120–0039, "Operating Requirements: Commuter and On Demand Operations."

For those pilots who become qualified to log SIC time under this provision, this would increase the recordkeeping requirements by the addition of these logbook endorsements. The FAA estimates that the pilots logging SIC time would require approximately 1.0 hours annually to log the various endorsements proposed in this provision. In information collection 2120–0021, the FAA states: "Section 61.51, Pilot logbooks—requires pilots to enter flight time that is to be credited toward experience or training requirements for certificates or ratings in a reliable record."

The FAA notes that this provision is voluntary and also considers this to be a minimum cost rule provision with positive, but unquantifiable, benefits. The time and burden estimated for the required logbook endorsement verifying the pilot is qualified to log this SIC time would be provided in approved information collection 2120–0021, "Pilots, Flight Instructors and Ground Instructors."

Pilot School Use of Special Curricula Courses for Renewal of Certificate

The FAA is proposing to amend § 141.5(d) to allow part 141 pilot schools that hold training course approvals for special curricula courses to renew their certificates based on their students' successful completion of an end-of-course test for these FAA approved courses. There are currently hundreds of FAA approved special curricula courses in use by active pilot schools but it is likely that with this new allowance, some schools will request new special curricula course approvals. The FAA seeks comments regarding the number of schools that might use this provision.

The FAA notes that this provision is voluntary and also considers this to be a minimum cost rule provision with positive, but unquantifiable, benefits. The time and burden estimated for a Part 141 Pilot School to develop and submit for approval will be provided in the OMB supporting statement for approved information collection 2120–0009, "Operating Requirements: Pilot Schools—FAR Part 141." The statement will also be adjusted for the current number of FAA certificated pilot schools currently listed at 581.

The below summarizes the changes made to each of the affected information collections.

Information Collection 2120–0009: Pilot Schools—FAR Part 141

Abstract: 49 CFR part 44707 authorizes certification of civilian schools giving instruction in flying. Information collected is used for certification and to determine applicant compliance. The information on FAA Form 8420–8, Application for Pilot School Certificates, is required from applicants who wish to be issued pilot school certificates and associated ratings.

TABLE 4—SUMMARY OF CHANGES TO INFORMATION COLLECTION 2120–0009

Provision	Frequency	Per respondent
New special curricula approvals	As needed	0.5 hours.
New applications	As needed	0.5 hours.
Adding special curricula	As needed	0.5 hours.

Information Collection 2120–0021: Certification: Pilots, Flight Instructors, and Ground Instructors

Abstract: 14 CFR part 61 prescribes certification standards for pilots, flight instructors, and ground instructors. The information collected is used to determine compliance with applicant eligibility, via FAA Form 8710–1.

TABLE 5—SUMMARY OF CHANGES TO INFORMATION COLLECTION 2120–0021

Provision	Frequency	Per respondent
Instrument Recency Experience Requirements	(4 times per year)	(0.1 hours).
Second in command time in part 135 operations	Annual	1 hour.

Information Collection 2120–0039: Operating Requirements: Commuter and On Demand Operations

Abstract: Title 49 U.S.C., Section 44702 authorizes issuance of air carrier operating certificates. 14 CFR prescribes requirement for Air Carrier/Commercial Operators. The information collected shows compliance and applicant eligibility.

TABLE 6—SUMMARY OF CHANGES TO INFORMATION COLLECTION 2120–0039

Provision	Frequency	Per respondent
New SIC professional development program	As needed*	40 hours.

TABLE 6—SUMMARY OF CHANGES TO INFORMATION COLLECTION 2120–0039—Continued

Provision	Frequency	Per respondent
Amend existing PIC professional development program	As needed*	20 hours.

* The FAA estimates that all operators intending to conduct a SIC professional development program will apply to do so in the first year of this information collection. The annual burden hours will be reduced in years 2 and 3 of this information collection.

Information Collection 2120–0593: Certification: Air Carriers and Commercial Operators

Abstract: The respondents to this information collection are Federal Aviation Regulations Part 135 and 121 operators. The FAA will use the information collected to ensure compliance and adherence to regulations.

TABLE 7—SUMMARY OF CHANGES TO INFORMATION COLLECTION 2120–0593

Provision	Frequency	Per respondent	Annual burden hours
Initial approval of Operations Specification for SIC professional development program.	As needed	0.2 hours	

The agency is soliciting comments to—

- Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of collecting information on those who are to respond, including by using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Individuals and organizations may send comments on the information collection requirement to the address listed in the **ADDRESSES** section at the beginning of this preamble by August 10, 2016. Comments also should be submitted to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for FAA, New Executive Building, Room 10202, 725 17th Street NW., Washington, DC 20053.

F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to ICAO Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified the following differences with these proposed regulations.

The FAA notes that, under proposed § 61.159(c), pilots would be permitted to log second in command flight time in part 135 operations when a second pilot is not required. ICAO standards do not recognize the crediting of flight time when a pilot is not required by the aircraft certification or the operation under which the flight is being conducted. Accordingly, all pilots who log flight time under this provision and apply for an ATP certificate would have a limitation on the certificate indicating that the pilot does not meet the PIC aeronautical experience requirements of ICAO. This limitation may be removed when the pilot presents satisfactory evidence that he or she has met the ICAO standards.

G. Environmental Analysis

FAA Order 1050.1F identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 5–6.6f and involves no extraordinary circumstances.

VIII. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. The agency has determined that this action would not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, would not have Federalism implications.

B. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it would not be a "significant energy action" under the executive order and would not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

C. Executive Order 13609, Promoting International Regulatory Cooperation

Executive Order 13609, Promoting International Regulatory Cooperation, (77 FR 26413, May 4, 2012) promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action would have no effect on international regulatory cooperation.

IX. Additional Information

A. Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The agency may change this proposal in light of the comments it receives.

Commenters are encouraged to identify the provisions on which they are commenting based on the title of the provisions used in Table 1 of this preamble.

Proprietary or Confidential Business Information: Commenters should not file proprietary or confidential business information in the docket. Such information must be sent or delivered directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document, and marked as proprietary or confidential. If submitting information on a disk or CD ROM, mark the outside of the disk or CD ROM, and identify electronically within the disk or CD ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), if the FAA is aware of proprietary information filed with a comment, the agency does not place it in the docket. It is held in a separate file to which the public does not have access, and the FAA places a note in the docket that it has received it. If the FAA receives a request to examine or copy this information, it treats it as any other request under the Freedom of Information Act (5 U.S.C. 552). The FAA processes such a request under Department of Transportation procedures found in 49 CFR part 7.

B. Availability of Rulemaking Documents

An electronic copy of rulemaking documents may be obtained from the Internet by—

- Searching the Federal eRulemaking Portal (*http://www.regulations.gov*);
- Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies* or
- Accessing the Government Publishing Office's Web page at *http://www.fdsys.gov.*

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9677. Commenters must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, may be accessed from the Internet through the Federal eRulemaking Portal referenced above.

List of Subjects

14 CFR Part 61

Aircraft, Airmen, Aviation safety, Teachers.

14 CFR Part 63

Aircraft, Airman, Aviation safety.

14 CFR Part 91

Aircraft, Airmen, Aviation safety.

14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety.

14 CFR Part 135

Aircraft, Airmen, Aviation safety.

14 CFR Part 141

Airmen, Educational facilities, reporting and recordkeeping requirements, Schools.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend chapter I of title 14, Code of Federal Regulations as follows:

PART 61—CERTIFICATION: PILOTS, FLIGHT INSTRUCTORS, AND GROUND INSTRUCTORS

■ 1. The authority citation for part 61 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701–44703, 44707, 44709–44711, 44729, 44903, 45102–45103, 45301–45302.

■ 2. Amend § 61.1(b) as follows:
■ a. Add a new definition of "aviation training device" in alphabetical order.
■ b. Revise the definition of "pilot time;" and,
■ c. Add new definition of "technically advanced airplane" in alphabetical order.

The revisions and additions read as follows:

§ 61.1 Applicability and definitions.

* * * * *

(b) * * *

Aviation training device means a training device, other than a full flight simulator or flight training device, that has been evaluated, qualified, and approved by the Administrator.

* * * * *

Pilot time means that time in which a person—

(i) Serves as a required pilot flight crewmember;

(ii) Receives training from an authorized instructor in an aircraft, full flight simulator, flight training device, or aviation training device;

(iii) Gives training as an authorized instructor in an aircraft, full flight simulator, flight training device, or aviation training device; or

(iv) Serves as second in command in operations conducted under part 135 of this chapter when a second pilot is not required under the type certification of the aircraft or the regulations under which the flight is being conducted, provided the requirements in § 61.159(c)(1) are satisfied.

* * * * *

Technically Advanced Airplane (TAA) means an airplane equipped with an electronically advanced avionics system that includes the following installed components:

(i) An electronic Primary Flight Display (PFD) that includes, at a minimum, an airspeed indicator, turn coordinator, attitude indicator, heading indicator, altimeter, and vertical speed indicator; and

(ii) An independent additional Multifunction Display (MFD) that includes, at a minimum, a Global Positioning System (GPS) with moving map navigation and an integrated two axis autopilot.

* * * * *

■ 3. In § 61.3, revise paragraph (a)(1)(iv), redesignate paragraph (a)(1)(v) as (a)(1)(vi), and add paragraph (a)(1)(v) to read as follows:

§ 61.3 Requirement for certificates, ratings, and authorizations.

(a) * * *

(1) * * *

(iv) A document conveying temporary authority to exercise certificate privileges issued by the Airmen Certification Branch under § 61.29(e);

(v) When engaged in a flight operation within the United States for a part 119 certificate holder authorized to conduct operations under parts 121 or 135, a temporary document provided by that certificate holder under an approved certificate verification plan; or

* * * * *

■ 4. In § 61.39, revise paragraph (a)(3) to read as follows:

§ 61.39 Prerequisites for practical tests.

(a) * * *

(3) Have satisfactorily accomplished the required training and obtained the aeronautical experience prescribed by this part for the certificate or rating sought, and if applying for the practical test with flight time accomplished under § 61.159(c)(1), present a copy of the records required by § 135.63(a)(4)(vi) and (x) of this chapter;

* * * * *

■ 5. Amend § 61.51 as follows:

■ a. In paragraphs (b)(1)(iii), (b)(1)(iv), (b)(2)(v), (b)(3)(iii), (b)(3)(iv), (k)(1)(ii), and (k)(2)(ii), remove the words "flight simulator" and add in their place the words "full flight simulator";

■ b. Revise paragraph (e)(1)(i);

■ c. Add paragraph (e)(5);

■ d. Revise paragraphs (f)(1) and (f)(2);

■ e. Add paragraph (f)(3);

■ f. Revise paragraph (g)(4);

■ g. Add paragraph (g)(5); and

■ h. Revise paragraph (h)(1).

The revisions and additions read as follows:

§ 61.51 Pilot logbooks.

* * * * *

(e) * * *

(1) * * *

(i) Except when logging flight time under § 61.159(c)(1), when the pilot is the sole manipulator of the controls of an aircraft for which the pilot is rated, or has sport pilot privileges for that category and class of aircraft, if the aircraft class rating is appropriate;

* * * * *

(5) An authorized flight instructor may log all flight time while acting as pilot in command of an operation under part 135 if the flight is conducted in accordance with an approved second-in-command professional development program that meets the requirements of § 135.99(c).

(f) * * *

(1) Is qualified in accordance with the second-in-command requirements of § 61.55 of this part, and occupies a crewmember station in an aircraft that requires more than one pilot by the aircraft's type certificate;

(2) Holds the appropriate category, class, and instrument rating (if an instrument rating is required for the flight) for the aircraft being flown, and more than one pilot is required under the type certification of the aircraft or the regulations under which the flight is being conducted; or

(3) Serves as second in command in operations conducted under part 135 of this chapter when a second pilot is not required under the type certification of the aircraft or the regulations under which the flight is being conducted, provided the requirements in § 61.159(c)(1) are satisfied.

(g) * * *

(4) A person may use time in a full flight simulator, flight training device, or aviation training device for acquiring instrument aeronautical experience for a pilot certificate or rating provided an authorized instructor is present to observe that time and signs the person's logbook or training record to verify the time and the content of the training session.

(5) A person may use time in a full flight simulator, flight training device, or aviation training device for satisfying instrument recency experience requirements provided a logbook or training record is maintained to specify the approved training device, time, and the content.

(h) *Logging training time.* (1) A person may log training time when that person receives training from an authorized instructor in an aircraft, full flight simulator, flight training device, or aviation training device.

* * * * *

■ 6. Amend § 61.57 as follows:

■ a. In paragraphs (a)(3), (b)(2), (d)(1)(ii), (e)(4)(ii)(D), and (g) introductory text, remove the words "flight simulator" and add in their place the words "full flight simulator";

■ b. Revise paragraph (c)(2); remove paragraphs (c)(3) through (c)(5); and, redesignate paragraph (c)(6) as paragraph (c)(3).

The revisions read as follows:

§ 61.57 Recent flight experience: Pilot in command.

* * * * *

(c) * * *

(2) *Use of a full flight simulator, flight training device, or aviation training device for maintaining instrument experience.* A pilot may accomplish the requirements in paragraph (c)(1) of this section in an approved full flight simulator, flight training device, or aviation training device provided the device represents the category of aircraft for the instrument rating privileges to be maintained and the pilot performs the tasks and iterations in simulated instrument conditions.

* * * * *

■ 7. Revise § 61.99 to read as follows:

§ 61.99 Aeronautical experience.

(a) A person who applies for a recreational pilot certificate must receive and log at least 30 hours of flight time that includes at least—

(1) 15 hours of flight training from an authorized instructor on the areas of operation listed in § 61.98 of this part that consists of at least:

(i) Except as provided in § 61.100 of this part, 2 hours of flight training en route to an airport that is located more than 25 nautical miles from the airport where the applicant normally trains, which includes at least three takeoffs and three landings at the airport located more than 25 nautical miles from the airport where the applicant normally trains; and

(ii) Three hours of flight training with an authorized instructor in the aircraft for the rating sought in preparation for the practical test within the preceding 2 calendar months from the month of the test.

(2) Three hours of solo flying in the aircraft for the rating sought, on the areas of operation listed in § 61.98 of this part that apply to the aircraft category and class rating sought.

(b) The holder of a sport pilot certificate may credit 10 hours of flight training received from a flight instructor with a sport pilot rating toward the training requirements of this section provided the flight training is accomplished in the same category and class of aircraft as the recreational pilot certificate rating sought.

■ 8. In § 61.109, amend paragraph (k) by removing the words "flight simulator" and adding in their place the words "full flight simulator", and add paragraph (l) to read as follows:

§ 61.109 Aeronautical experience.

* * * * *

(l) *Permitted credit for flight training received from a flight instructor with a sport pilot rating.* The holder of a sport pilot certificate may credit flight training received from a flight instructor with a sport pilot rating as follows:

(1) For a private pilot certificate with an airplane category single engine class rating or private pilot certificate with a rotorcraft category gyroplane class rating, a person may credit 10 hours of flight training received from a flight instructor provided the flight training is accomplished in the same category and class of aircraft for the rating sought.

(2) For a private pilot certificate with a lighter-than-air category airship class rating, a pilot may credit 12.5 hours of flight training received from a flight instructor with a sport pilot rating provided that training was accomplished in an airship.

(3) For a private pilot certificate with a lighter-than-air category balloon class rating, a pilot may credit 5 hours of flight training including 3 training flights received from a flight instructor with a sport pilot rating provided that

flight training was accomplished in a balloon.

■ 9. In § 61.129:

■ a. Revise paragraphs (a)(3)(ii) and (b)(3)(ii); and

■ b. In paragraphs (c)(3)(i), (d) introductory text, (d)(3)(i), and (i), remove the words "flight simulator" and add in their place the words "full flight simulator". The revisions read as follows:

§ 61.129 Aeronautical experience.

(a) * * *

(3) * * *

(ii) 10 hours of training in a complex airplane, a turbine-powered airplane, or a technically advanced airplane (TAA); or for an applicant seeking a single-engine seaplane rating, 10 hours of training in a seaplane that has flaps and a controllable pitch propeller;

* * * * *

(b) * * *

(3) * * *

(ii) 10 hours of training in a multiengine complex or turbine-powered airplane; or for an applicant seeking a multiengine seaplane rating, 10 hours of training in a multiengine seaplane that has flaps and a controllable pitch propeller;

* * * * *

■ 10. In § 61.159:

■ a. Amend paragraph (a)(4) by removing the words "flight simulator" and adding in their place the words "full flight simulator";

■ b. Revise the introductory text of paragraph (a)(5), the introductory text of paragraph (c), and paragraph (c)(1). The revisions read as follows:

§ 61.159 Aeronautical experience: Airplane category rating.

(a) * * *

(5) 250 hours of flight time in an airplane as a pilot in command, or when serving as a required second in command flightcrew member performing the duties of pilot in command while under the supervision of a pilot in command, or any combination thereof, which includes at least—

* * * * *

(c) A commercial pilot may log the following second-in-command pilot time or flight-engineer flight time toward the 1,500 hours of total time as a pilot required by paragraph (a) of this section and the total flight time requirements in § 61.160:

(1) Second-in-command pilot time in operations conducted under part 135 of this chapter when a second pilot is not required under the type certification of the aircraft or the regulations under which the flight is being conducted, provided—

(i) The experience is accomplished as part of a second-in-command professional development program approved by the Administrator under § 135.99 of this chapter;

(ii) The pilot in command of the operation certifies in the pilot's logbook that the second-in-command pilot time was accomplished under this section; and

(iii) The pilot time may not be logged as pilot-in-command time even when the pilot is the sole manipulator of the controls and may not be used to meet the aeronautical experience requirements in paragraphs (a)(1) through (a)(5) of this section.

* * * * *

■ 11. In § 61.161, amend paragraph (b) by removing the words "flight simulator" and adding in their place the words "full flight simulator", and add paragraphs (c), (d), and (e) to read as follows:

§ 61.161 Aeronautical experience: Rotorcraft category and helicopter class rating.

* * * * *

(c) Flight time logged under § 61.159(c)(1) of this chapter may be counted toward the 1,200 hours of total time as a pilot required by paragraph (a) of this section.

(d) An applicant is issued an airline transport pilot certificate with the limitation, "Holder does not meet the pilot in command aeronautical experience requirements of ICAO," as prescribed under Article 39 of the Convention on International Civil Aviation, if the applicant does not meet the ICAO requirements contained in Annex 1 "Personnel Licensing" to the Convention on International Civil Aviation, but otherwise meets the aeronautical experience requirements of this section.

(e) An applicant is entitled to an airline transport pilot certificate without the ICAO limitation specified under paragraph (d) of this section when the applicant presents satisfactory evidence of having met the ICAO requirements under paragraph (d) of this section and otherwise meets the aeronautical experience requirements of this section.

■ 12. In § 61.195, revise paragraphs (b) and (c) to read as follows:

§ 61.195 Flight instructor limitations and qualifications.

* * * * *

(b) *Aircraft Ratings.* Except as provided in paragraph (c) of this section, a flight instructor may not conduct flight training in any aircraft for which the flight instructor does not hold:

(1) A flight instructor certificate with the applicable category and class rating; and

(2) A pilot certificate with a type rating, if appropriate.

(c) *Instrument Rating.* A flight instructor may conduct instrument training for the issuance of an instrument rating, a type rating not limited to VFR, or the instrument training required for commercial pilot and airline transport pilot certificates if the flight instructor holds an instrument rating appropriate to the aircraft used for the instrument training on his or her flight instructor certificate, and:

(1) Meets the requirements of paragraph (b) of this section; or

(2) Holds a commercial pilot certificate or airline transport pilot certificate with the appropriate category and class ratings for the aircraft in which the instrument training is provided if the pilot receiving instrument training holds a pilot certificate with category and class ratings appropriate to the aircraft in which the instrument training is being provided.

* * * * *

■ 13. In § 61.197, revise paragraph (a)(2)(iv) and (c) to read as follows:

§ 61.197 Renewal requirements for flight instructor certification.

(a) * * *

(2) * * *

(iv) A record showing that, within the preceding 24 months from the month of application, the flight instructor passed an official U.S. Armed Forces proficiency check in an aircraft for which the military instructor already holds a rating or in an aircraft for an additional rating.

* * * * *

(c) The practical test required by paragraph (a)(1) of this section may be accomplished in a full flight simulator or flight training device if the test is accomplished pursuant to an approved course conducted by a training center certificated under part 142 of this chapter.

■ 14. In § 61.199, add paragraphs (a)(3), (c) and (d) to read as follows:

§ 61.199 Reinstatement requirements of an expired flight instructor certificate.

(a) * * *

(3) For military instructors, provide a record showing that, within the preceding 6 calendar months from the date of application for reinstatement, the person passed a U.S. Armed Forces instructor pilot or pilot examiner

proficiency check for an additional military instructor rating.

* * * * *

(c) The holder of an expired flight instructor certificate issued prior to October 20, 2009, may apply for reinstatement of that certificate by presenting the following:

(1) A record showing that, since the date the flight instructor certificate was issued, the person passed a U.S. Armed Forces instructor pilot or pilot examiner proficiency check for an additional military rating; and

(2) A knowledge test report that shows the person passed a knowledge test on the aeronautical knowledge areas listed under § 61.185(a) appropriate to the flight instructor rating sought and the knowledge test was passed within the preceding 24 calendar months prior to the month of application.

(d) The requirements of paragraph (c) of this section will expire on [THE FAA WILL INSERT DATE ONE YEAR AFTER THE EFFECTIVE DATE OF FINAL RULE IN FEDERAL REGISTER].

■ 15. Add § 61.412 to read as follows:

§ 61.412 Do I need additional training to provide instruction on control and maneuvering an airplane solely by reference to the instruments in a light-sport aircraft based on V_h?

To provide flight training on control and maneuvering an aircraft solely by reference to the instruments for the purpose of issuing a solo cross-country endorsement to a sport pilot applicant under § 61.93(e)(12), a sport pilot instructor must:

(a) Hold an endorsement under § 61.327;

(b) Receive and log a minimum of 1 hour of ground training and 3 hours of flight training from an authorized instructor in an airplane with a V_h greater than 87 knots CAS or in a full flight simulator or flight training device that replicates an airplane with a V_h greater than 87 knots CAS; and

(c) Receive a one-time endorsement in the sport pilot instructor's logbook from an instructor authorized under subpart H of this part who certifies that the person is proficient in providing training on control and maneuvering solely by reference to the instruments in an airplane with a V_h greater than 87 knots CAS. This flight training must include straight and level flight, turns, descents, climbs, use of radio aids, and ATC directives.

■ 16. In § 61.415, redesignate paragraphs (h) and (i) as paragraphs (i) and (j), and add paragraph (h) to read as follows:

§ 61.415 What are the limits of a flight instructor certificate with a sport pilot rating?

* * * * *

(h) You may not provide training on the control and maneuvering of an aircraft solely by reference to the instruments in a light sport aircraft with a V_h greater than 87 knots CAS unless you meet the requirements in § 61.412.

* * * * *

PART 63—CERTIFICATION: FLIGHT CREWMEMBERS OTHER THAN PILOTS

■ 17. The authority citation for part 63 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

■ 18. Revise § 63.3 to read as follows:

§ 63.3 Certificates and ratings required.

(a) Except as provided in paragraph (c), no person may act as a flight engineer of a civil aircraft of U.S. registry unless that person has in his or her personal possession or readily accessible in the aircraft:

(1) A current flight engineer certificate with appropriate ratings issued to that person under this part;

(2) A document conveying temporary authority to exercise certificate privileges issued by the Airman Certification Branch under § 63.16(d) of this part; or

(3) When engaged in a flight operation within the United States for a part 119 certificate holder authorized to conduct operations under parts 121, a temporary document provided by that certificate holder under an approved certificate verification plan.

(b) A person may act as a flight engineer of an aircraft only if that person holds a current second-class (or higher) medical certificate issued to him under part 67 of this chapter, or other documentation acceptable to the FAA, that is in that person's physical possession or readily accessible in the aircraft.

(c) When the aircraft is operated within a foreign country, a current flight engineer certificate issued by the country in which the aircraft is operated, with evidence of current medical qualification for that certificate, may be used. Also, in the case of a flight engineer certificate issued under § 63.42, evidence of current medical qualification accepted for the issue of that certificate is used in place of a medical certificate.

(d) No person may act as a flight navigator of a civil aircraft of U.S. registry unless he has in his personal possession a current flight navigator certificate issued to him under this part and a second-class (or higher) medical certificate issued to him under part 67 of this chapter within the preceding 12 months. However, when the aircraft is operated within a foreign country, a current flight navigator certificate issued by the country in which the aircraft is operated, with evidence of current medical qualification for that certificate, may be used.

(e) Each person who holds a flight engineer or flight navigator certificate, or medical certificate, shall present either or both for inspection upon the request of the Administrator or an authorized representative of the National Transportation Safety Board, or of any Federal, State, or local law enforcement officer.

■ 19. Revise § 63.16 to read as follows:

§ 63.16 Change of name; replacement of lost or destroyed certificate.

(a) An application for a change of name on a certificate issued under this part must be accompanied by the applicant's current certificate and the marriage license, court order, or other document verifying the change. The documents are returned to the applicant after inspection.

(b) A request for a replacement of a lost or destroyed airman certificate issued under this part must be made—

(1) By letter to the Department of Transportation, Federal Aviation Administration, Airman Certification Branch, Post Office Box 25082, Oklahoma City, OK 73125 and must be accompanied by a check or money order for the appropriate fee payable to the FAA; or

(2) In any other form and manner approved by the Administrator including a request to Airman Services at *http://www.faa.gov,* and must be accompanied by acceptable form of payment for the appropriate fee.

(c) A request for the replacement of a lost or destroyed medical certificate must be made:

(1) By letter to the Department of Transportation, FAA, Aerospace Medical Certification Division, P.O. Box 26200, Oklahoma City, OK 73125, and must be accompanied by a check or money order for the appropriate fee payable to the FAA; or

(2) In any other manner and form approved by the Administrator and must be accompanied by acceptable form of payment for the appropriate fee.

(d) A request for the replacement of a lost or destroyed knowledge test report must be made:

(1) By letter to the Department of Transportation, FAA, Airmen

Certification Branch, P.O. Box 25082, Oklahoma City, OK 73125, and must be accompanied by a check or money order for the appropriate fee payable to the FAA; or

(2) In any other manner and form approved by the Administrator and must be accompanied by acceptable form of payment for the appropriate fee.

(e) The letter requesting replacement of a lost or destroyed airman certificate, medical certificate, or knowledge test report must state:

(1) The name of the person;

(2) The permanent mailing address (including ZIP code), or if the permanent mailing address includes a post office box number, then the person's current residential address;

(3) The certificate holder's date and place of birth; and

(4) Any information regarding the—

(i) Grade, number, and date of issuance of the airman certificate and ratings, if appropriate;

(ii) Class of medical certificate, the place and date of the medical exam, name of the Airman Medical Examiner (AME), and the circumstances concerning the loss of the original medical certificate, as appropriate; and

(iii) Date the knowledge test was taken, if appropriate.

(f) A person who has lost an airman certificate, medical certificate, or knowledge test report may obtain in a form or manner approved by the Administrator, a document conveying temporary authority to exercise certificate privileges from the FAA Aeromedical Certification Branch or the Airman Certification Branch, as appropriate, and the—

(1) Document may be carried as an airman certificate, medical certificate, or knowledge test report, as appropriate, for a period not to exceed 60 days pending the person's receiving a duplicate under paragraph (b), (c), or (d) of this section, unless the person has been notified that the certificate has been suspended or revoked.

(2) Request for such a document must include the date on which a duplicate certificate or knowledge test report was previously requested.

PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 20. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 1155, 40101, 40103, 40105, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, 47534, articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180), (126 Stat. 11).

■ 21. In § 91.109, revise paragraph (c)(1) to read as follows:

§ 91.109 Flight instruction; Simulated instrument flight and certain flight tests.

* * * * *

(c) * * *

(1) The other control seat is occupied by a safety pilot who possesses at least:

(i) A private pilot certificate with category and class ratings appropriate to the aircraft being flown; or

(ii) For purposes of providing training for a solo cross-country endorsement under § 61.93 of this chapter, a flight instructor certificate with an appropriate sport pilot rating and an endorsement under § 61.412 of this chapter.

* * * * *

■ 22. In § 91.313, revise paragraphs (b), (c), and (d)(3) and (d)(4) and add paragraphs (d)(5) and (h) to read as follows:

§ 91.313 Restricted category civil aircraft: Operating limitations.

* * * * *

(b) For the purpose of paragraph (a) of this section, the following operations are considered necessary to accomplish the work activity directly associated with a special purpose operation:

(1) Flights conducted for flight crewmember training in a special purpose operation for which the aircraft is certificated and flights conducted to satisfy proficiency check and recent flight experience requirements under part 61 of this chapter provided the flight crewmember holds the appropriate category, class, and type ratings and is employed by the operator to perform the appropriate special purpose operation; and

(2) Flights conducted to relocate the aircraft for maintenance.

(c) No person may operate a restricted category civil aircraft carrying persons or property for compensation or hire. For the purposes of this paragraph, a special purpose operation involving the carriage of persons or material necessary to accomplish that operation, such as crop dusting, seeding, spraying, and banner towing (including the carrying of required persons or material to the location of that operation), an operation for the purpose of providing flight crewmember training in a special purpose operation, and an operation conducted under the authority provided in paragraph (h) of this section are not considered to be the carriage of persons or property for compensation or hire.

(d) * * *

(3) Performs an essential function in connection with a special purpose operation for which the aircraft is certificated;

(4) Is necessary to accomplish the work activity directly associated with that special purpose; or

(5) Is necessary to accomplish an operation under paragraph (h) of this section.

* * * * *

(h) *Deviation authority.* (1) An operator may apply for deviation authority from the provisions of paragraph (a) of this section to conduct operations for the following purposes:

(i) Flight training and the practical test for issuance of a type rating provided the pilot being trained and tested holds at least a commercial pilot certificate with the appropriate category and class ratings for the aircraft type and is employed by the operator to perform a special purpose operation; and

(ii) Flights to designate an examiner or training center evaluator or qualify an FAA inspector in the aircraft type and flights necessary to provide continuing oversight and evaluation of an examiner or inspector.

(2) The FAA will issue this deviation authority as a letter of deviation authority.

(3) The FAA may cancel or amend a letter of deviation authority at any time.

(4) An applicant must submit a request for deviation authority in a form and manner acceptable to the Administrator at least 60 days before the date of intended operations. A request for deviation authority must contain a complete description of the proposed operation and justification that establishes a level of safety equivalent to that provided under the regulations for the deviation requested.

■ 23. Revise § 91.531 to read as follows:

§ 91.531 Second in command requirements.

(a) Except as provided in paragraph (b) of this section, no person may operate the following airplanes without a pilot designated as second in command:

(1) Any airplane that is type certificated for more than one required pilot.

(2) Any large airplane unless the type certification requirements for that airplane permit operation by a single pilot.

(3) Any commuter category airplane.

(b) A person may operate the following airplanes without a pilot designated as second in command:

(1) A large airplane certificated under SFAR 41 if that airplane is certificated for operation with one pilot.

(2) A commuter category airplane, that has a passenger seating configuration, excluding pilot seats, of

nine or less if that airplane is type certificated for one required pilot.

(3) A large or turbojet-powered multiengine airplane that holds a special airworthiness certificate, if:

(i) the airplane was originally designed with only one pilot station, or

(ii) the airplane was originally designed with more than one pilot station, but single pilot operations were permitted by the airplane flight manual or were otherwise permitted by a branch of the United States armed forces or the armed forces of a foreign contracting State to the Convention on International Civil Aviation.

(c) No person may designate a pilot to serve as second in command, nor may any pilot serve as second in command, of an airplane required under this section to have two pilots unless that pilot meets the qualifications for second in command prescribed in § 61.55 of this chapter.

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

■ 24. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40113, 40119, 41706, 42301 preceding note added by Pub. L. 112–95, sec. 412, 126 Stat. 89, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44729, 44732; 46105; Pub. L. 111–216, 124 Stat. 2348 (49 U.S.C. 44701 note); Pub. L. 112–95, 126 Stat. 62 (49 U.S.C. 44732 note).

■ 25. In § 121.383, revise paragraph (c) to read as follows:

§ 121.383 Airman: Limitations on use of services.

* * * * *

(c) A certificate holder may obtain approval to provide a temporary document verifying a flightcrew member's airman certificate and medical certificate privileges under an approved certificate verification plan set forth in the certificate holder's operations specifications. A document provided by the certificate holder may be carried as an airman certificate or medical certificate on flights within the United States for up to 72 hours.

* * * * *

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

■ 26. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 41706, 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722, 44730, 45101–45105; Pub. L. 112–95, 126 Stat. 58 (49 U.S.C. 44730).

■ 27. Revise § 135.95 to read as follows:

§ 135.95 Airmen: Limitations on use of services.

(a) No certificate holder may use the services of any person as an airman unless the person performing those services—

(1) Holds an appropriate and current airman certificate; and

(2) Is qualified, under this chapter, for the operation for which the person is to be used.

(b) A certificate holder may obtain approval to provide a temporary document verifying a flightcrew member's airman certificate and medical certificate privileges under an approved certificate verification plan set forth in the certificate holder's operations specifications. A document provided by the certificate holder may be carried as an airman certificate or medical certificate on flights within the United States for up to 72 hours.

■ 28. In § 135.99, add paragraphs (c) and (d) to read as follows:

§ 135.99 Composition of flight crew.

* * * * *

(c) Except as provided in paragraph (d), a certificate holder authorized to conduct operations under instrument flight rules may receive authorization from the Administrator through its operations specifications to establish a second-in-command professional development program. As part of that program, a pilot employed by the certificate holder may log time as second in command in operations under this part that do not require a second pilot by type certification of the aircraft or the regulation under which the flight is being conducted, provided—

(1) The certificate holder:

(i) Maintains records for each assigned second in command consistent with the requirements in § 135.63 of this part;

(ii) Provides a copy of the records required by § 135.63(a)(4)(vi) and (x) of this part to the assigned second in command upon request and within a reasonable time;

(iii) Establishes and maintains a data collection and analysis process that will enable the certificate holder and the FAA to determine whether the professional development program is accomplishing its objectives; and

(iv) Conducts flight instructor standardization meetings at least once every 12 calendar months for all flight instructors serving as pilot in command during operations with a second in command serving under the professional development program.

(2) The aircraft is a multiengine airplane that has an independent set of controls for a second pilot flightcrew member which may not include a throwover control wheel and the following equipment and independent instrumentation for a second pilot:

(i) An airspeed indicator;

(ii) Sensitive altimeter adjustable for barometric pressure;

(iii) Gyroscopic bank and pitch indicator;

(iv) Gyroscopic rate-of-turn indicator combined with an integral slip-skid indicator;

(v) Gyroscopic direction indicator;

(vi) For IFR operations, a vertical speed indicator;

(vii) For IFR operations, course guidance for en route navigation and instrument approaches; and

(viii) A microphone, transmit switch, and headphone or speaker.

(3) The pilot assigned to serve as second in command satisfies the following requirements:

(i) The second in command qualifications in § 135.245 of this part;

(ii) The flight time and duty period limitations and rest requirements in subpart F of this part;

(iii) The crewmember testing requirements for second in command in subpart G of this part; and

(iv) The crewmember training requirements for second in command in subpart H of this part; and

(4) The assigned pilot in command is a flight instructor (aircraft) qualified under §§ 135.338 and 135.340 of this part.

(d) The following certificate holders are not eligible to receive authorization for a second-in-command professional development program under paragraph (c):

(1) A certificate holder that uses only one pilot in its operations; and

(2) A certificate holder that has been approved to deviate from the requirements in §§ 135.21(a), 135.341(a), or 119.69(a) of this chapter.

■ 29. In § 135.245, revise paragraph (a) and add paragraph (c) to read as follows.

§ 135.245 Second in command qualifications.

(a) Except as provided in paragraph (b), no certificate holder may use any person, nor may any person serve, as second in command of an aircraft unless that person holds at least a commercial pilot certificate with appropriate category and class ratings and an instrument rating.

* * * * *

(c) No certificate holder may use any person, nor may any person may serve, as second in command under IFR unless that person meets the following instrument experience requirements:

(1) Use of an airplane or helicopter for maintaining instrument experience. Within the 6 calendar months preceding the month of the flight, that person performed and logged at least the following tasks and iterations in-flight in an airplane or helicopter, as appropriate, in actual weather conditions, or under simulated instrument conditions using a view-limiting device:

(i) Six instrument approaches;

(ii) Holding procedures and tasks; and

(iii) Intercepting and tracking courses through the use of navigational electronic systems.

(2) Use of an FSTD for maintaining instrument experience. A person may accomplish the requirements in paragraph (c)(1) of this section in an approved FSTD provided:

(i) The FSTD represents the category of aircraft for the instrument rating privileges to be maintained;

(ii) The person performs the tasks and iterations in simulated instrument conditions; and

(iii) An authorized instructor observes the tasks and iterations and signs the person's logbook or training record to verify the time and content of the session.

PART 141—PILOT SCHOOLS

■ 30. The authority citation for part 141 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701–44703, 44707, 44709, 44711, 45102–45103, 45301–45302.

■ 31. In § 141.5, revise paragraph (d) to read as follows:

§ 141.5 Requirements for a pilot school certificate.

* * * * *

(d) Has established a pass rate of 80 percent or higher on the first attempt for all:

(1) Knowledge tests leading to a certificate or rating,

(2) Practical tests leading to a certificate or rating,

(3) End-of-course tests for an approved training course specified in appendix K of this part; and

(4) End-of-course tests for special curricula courses approved under § 141.57 of this part.

* * * * *

■ 32. In appendix D to part 141:

■ a. Revise section 4, paragraphs (b)(1)(ii) and (b)(2)(ii); and

■ b. Amend paragraphs (b)(3)(i) and (b)(4)(i), by removing the words "flight simulator" and adding in their place the words "full flight simulator". The revisions read as follows:

Appendix D to Part 141—COMMERCIAL PILOT CERTIFICATION COURSE

* * * * *

4. *Flight training.*

* * * * *

(b) * * *

(1) * * *

(ii) Ten hours of training in a complex airplane, a turbine-powered airplane, or a technically advanced airplane;

* * * * *

(2) * * *

(ii) 10 hours of training in a multiengine complex or turbine-powered airplane;

* * * * *

■ 33. In appendix I to part 141, revise section 4, paragraph (k)(2)(iv) and (k)(2)(v) to read as follows:

Appendix I to Part 141—Additional Aircraft Category and/or Class Rating Course

* * * * *

4. *Flight training.*

* * * * *

(k) * * *

(2) * * *

(iv) One 2-hour cross country flight during nighttime conditions in a multiengine airplane and, a total straight-line distance of more than 100 nautical miles from the original point of departure; and

(v) Three hours of flight training in a multiengine airplane within 2 calendar months before the date of the practical test.

* * * * *

Issued in Washington, DC, under the authority of 49 U.S.C. 106(f), 44701(a)(5), and 44703(a), on April 22, 2016.

John S. Duncan,

Director, Flight Standards Service.

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